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CHAPTER 08. SECURITIES.

ARTICLE 1. REGISTRATION, NOTICE, AND REGULATION OF BROKER-DEALERS, AGENTS, STATE INVESTMENT ADVISERS, FEDERAL COVERED ADVISERS, AND INVESTMENT ADVISER REPRESENTATIVES.

Section

- 05. Scope
- 07. Applicability of registration requirements to supervised persons of state investment advisers
- 10. Registration; notice; exemptions to registration; waivers for dual representation
- 11. Initial applications and notices; effective dates of applications and notices
- 12. Exemptions from qualifying examination
- 13. Qualification requirements for registration of investment adviser representatives
- 14. Renewal of registration or notice; effective date of renewal or notice
- 15. Fees and assessments
- 16. Transferred or successor registration or notice
- 17. Central registration depository system
- 18. Amendments to filings
- 20. Repealed
- 21. Financial reports, minimum capital requirements, bonds, and record-keeping requirements of broker-dealers
- 23. Repealed
- 25. Bonding requirements for certain state investment advisers
- 27. Minimum financial requirements for state investment advisers
- 29. Custody of client funds or securities by state investment advisers
- 30. Books and records of broker-dealers
- 31. Repealed
- 40. Books and records of state investment advisers
- 42. Books and records of agents of issuers
- 50. Effectiveness and post-effective requirements
- 53. Disclosures to clients
- 55. Advertising on the internet by broker-dealers, state investment advisers, broker-dealer agents, and investment adviser representatives
- 60. Repealed
- 61. Repealed
- 62. Fraudulent practices of issuers and persons acting on an issuer's behalf
- 65. Sales of securities at financial institutions
- 70. Repealed

3 AAC 08.005. SCOPE. (a) The applicable provisions of 3 AAC 08.005 -- 3 AAC 08.070 set out the regulatory standards for registration, exemption to registration, renewal of registration, qualification and examination requirements, required fees, effective dates of registration, and related matters for the following occupations under AS 45.55:

- (1) broker-dealer;
- (2) agent;
- (3) state investment adviser;
- (4) investment adviser representatives.

(b) The applicable provisions of 3 AAC 08.010 -- 3 AAC 08.018 also set out the regulatory standards for the administrator's acceptance of filing of notice and renewal of notice, required fees, required filings, effective date of notice, renewal of notice on federal covered investment advisers, and related matters. (Eff. 10/1/1999, Register 151)

Authority: AS 45.55.040 AS 45.55.060 AS 45.55.950 AS 45.55.050

3 AAC 08.007. APPLICABILITY OF REGISTRATION REQUIREMENTS TO SUPERVISED PERSONS OF STATE INVESTMENT ADVISERS. For purposes of determining whether, by providing to clients who are natural persons the services described in AS 45.55.990(15)(A)(i), the supervised person of a state investment adviser is an investment adviser representative subject to the requirements of AS 45.55 and this chapter, "clients who are natural persons" as defined in AS 45.55.990(8) does not include natural persons who are "qualified clients" under 17 C.F.R. 275.205-3(d)(1). (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.030 AS 45.55.950 AS 45.55.990

3 AAC 08.010. REGISTRATION; NOTICE; EXEMPTIONS TO REGISTRATION; WAIVERS FOR DUAL REPRESENTATION. (a) A broker-dealer, an agent, an investment adviser representative, or a state investment adviser may be registered or have the registration renewed under AS 45.55, if the administrator finds that the applicant

- (1) is qualified;
- (2) has sufficient training, knowledge, and experience in the securities business;
- (3) is of good repute; and
- (4) has otherwise fully satisfied the requirements of AS 45.55 and this chapter.

(b) A federal covered adviser may file initial and renewal notices to provide advisory services under AS 45.55 by filing notice with the administrator and paying applicable fees set out in 3 AAC 08.015.

(c) A broker-dealer may not transact business as a state investment adviser in this state unless the broker-dealer's registration or renewal of registration specifies training, experience, and knowledge as a state investment adviser. A broker-dealer may not transact business in this state as a federal covered adviser unless the broker-dealer has provided notice to the administrator and paid applicable fees set out in 3 AAC 08.015.

(d) In addition to complying with AS 45.55 and this chapter, a foreign corporation doing business in this state as a broker-dealer, an agent, a federal covered adviser, or a state investment adviser must register under AS 10.06 before doing business in this state, unless exempted under AS 10.06.718.

(e) Unless the administrator grants a waiver under (f) of this section, an agent, including a partner, an officer, or a director who registers as an agent, may not be registered for more than one broker-dealer, one issuer, one state investment adviser, or

one federal covered adviser, or for a combination of one state investment adviser and one federal covered adviser. However, an agent may register to be an agent for any combination of the occupations listed in this subsection, so long as the combination does not result in the agent being registered for

- (1) two or more broker-dealers;
- (2) two or more issuers;
- (3) two or more state investment advisers;
- (4) two or more federal covered advisers; or
- (5) a combination of
 - (A) one or more state investment advisers; and
 - (B) one or more federal investment advisers.

(f) A request for a waiver from the dual representation restriction set out in (e) of this section may be submitted to the administrator. The administrator will, in the administrator's discretion, grant the request submitted under this subsection if

(1) the management and controlling persons are essentially identical of the following:

- (A) broker-dealers;
- (B) issuers;
- (C) state investment advisers;
- (D) federal covered advisers;

(2) a conflict of interest does not exist if the waiver is granted by the administrator;

(3) the administrator finds that the need for a waiver is fully justified;

(4) each issuer, broker-dealer, state investment adviser, or federal covered adviser for which an application has been made has acknowledged by written consent the dual registration and the need for the waiver; and

(5) if the application concerns other occupations not involving the securities business, dual representation already exists among those applicants. (Eff. 2/20/72, Register 41, am 10/1/1999, Register 151)

Authority: AS 45.55.040 AS 45.55.060 AS 45.55.950 AS 45.55.050

3 AAC 08.011. INITIAL APPLICATIONS AND NOTICES; EFFECTIVE DATES OF APPLICATIONS AND NOTICES. (a) This section sets out the regulatory requirements for submitting initial applications for broker-dealers, issuers, agents, state investment advisers, and investment adviser representatives. This section also sets out requirements for the administrator's acceptance of filing of initial notices by federal covered advisers. The section also establishes the effective dates of the initial applications and notices.

(b) An application for initial broker-dealer registration for broker-dealers that are not NASD members and are not required by federal law to become NASD members shall be made by submitting the following items to the administrator:

(1) a complete current, signed SEC Form BD, or its successor, with "AK" checked in item two of page two, and the appropriate schedules to the form;

(2) a copy of the most recent

(A) audited financial statements; and

(B) a SEC Form X-17A-5, or its successor, which is commonly known as the "focus report";

(3) documents showing that the applicant is registered with the SEC, if the applicant is not a member of the NASD and is not required by federal law to become an NASD member;

(4) applicable fees set out in 3 AAC 08.015.

(c) An application for initial registration for broker-dealers that are NASD members or are required by federal law to become NASD members must be made through the NASDR's Central Registration Depository (CRD), or any successor system. The broker-dealer shall comply with applicable NASD rules regarding filing requirements, dates, and payments of applicable fees set out in 3 AAC 08.015, and must check "AK" in item two of page two of SEC Form BD. The administrator will consider an application for registration filed on the date on which notice of intention to register in this state is received by the administrator from the NASD.

(d) Unless the application for initial broker-dealer registration is made effective earlier by the administrator, registration becomes effective at noon on the thirtieth day after an application is filed and the applicable fee set out in 3 AAC 08.015 is paid if

(1) a denial order is not in effect concerning the applicant;

(2) a proceeding is not pending under AS 45.55.060 concerning the applicant; and

(3) the administrator has not initiated an investigation of the application under AS 45.55.910.

(e) A broker-dealer whose registration is effective in this state may file an initial agent registration by submitting the following items:

(1) if the broker-dealer is not an NASD member and is not required by federal law to become an NASD member, the broker-dealer must file with the administrator

(A) a signed, complete NASDR Form U-4 for each agent with "AK" checked as location for registration;

(B) documents demonstrating that each agent has passed the NASDR Series 63 examination and any other applicable NASDR examination; and

(C) the applicable fee as set out in 3 AAC 08.015 for each agent.

(2) if the broker-dealer is an NASD member or is required by federal law to become an NASD member, the broker-dealer must

(A) make application through the CRD, or its successor;

(B) comply with applicable NASD rules regarding filing requirements, dates, and payments of applicable fees set out in 3 AAC 08.015;

(C) submit documents demonstrating that each agent has passed the NASDR Series 63 or Series 66 examination and any other applicable NASDR examination;

(f) The administrator will consider an application for registration under (e)(2) of the section as filed with the administrator on the day on which notice of intention to register in this state is received by the administrator from the NASD.

(g) Initial registration of an agent under AS 45.55 becomes effective as follows:

(1) if the broker-dealer is not an NASD member and is not required by federal law to become an NASD member,

(A) if the agent is not seeking dual registration and has indicated no affirmative response to any part of question 22 of NASDR Form U-4, or its successor, the application for registration becomes effective as of

(i) the effective date of the registration for broker-dealer if both applications are submitted together; or

(ii) the date that the items in (e)(1) of this section are received by the administrator;

(B) if the agent is not seeking dual registration and has indicated an affirmative response to any part of question 22 of NASDR Form U-4, or its successor, unless the application is made effective earlier by the administrator, the registration becomes effective at noon on the thirtieth day after the application and the items in (e)(1) are filed, if

(i) a denial order is not in effect concerning the application;

(ii) a proceeding is not pending concerning the applicant under AS 45.55.060; and

(iii) the administrator has not initiated an investigation of the application under AS 45.55.910;

(2) if the broker-dealer is an NASD member or is required by federal law to become an NASD member,

(A) the application for registration becomes effective as of the date that

(i) the items in (e)(2) of this section are filed with the CRD, or its successor if the agent has indicated no affirmative response to any part of question 22 of NASDR Form U-4, or its successor; and

(ii) is not seeking dual registration;

(B) unless the application is made effective on the CRD earlier by the administrator, the application for registration becomes effective at noon on the thirtieth day after the application and items in (e)(2) are filed with the CRD if the agent is not seeking dual registration and has indicated an affirmative response to any part of question 22 of NASDR Form U-4 and

(i) a denial order is not in effect concerning the applicant;

(ii) a proceeding is not pending concerning the applicant under AS 45.55.060; and

(iii) the administrator has not initiated an investigation under AS 45.55.910.

(h) An issuer may file initial application for registration of an agent with the administrator containing the following:

(1) a signed complete NASDR Form U-4, or its successor, for each agent;

(2) documents demonstrating that each agent has passed the NASDR Series 63 or Series 66 examination, unless waived by the administrator; and

(3) the applicable fees set out in 3 AAC 08.015 for each agent.

(i) Unless the administrator makes the issuer's initial application for registration of an agent effective earlier, the registration becomes effective at noon on the thirtieth day after the application and items listed in (g) are filed with the administrator if the agent is not seeking dual registration; and

(1) an affirmative response is not made to question 22 of NASDR Form U-4;

(2) a denial order is not in effect concerning the applicant;

(3) a proceeding is not pending concerning the applicant under AS 45.55.060; and

(4) the administrator has not initiated an investigation under AS 45.55.910.

(j) A person may file an initial application to register as a state investment adviser by submitting the following with the administrator:

- (1) a complete, current, signed SEC Form ADV, or its successor;
- (2) a surety bond on a State of Alaska Form 08-100 or its successor, if required by 3 AAC 08.025;
- (3) a complete, current, and signed NASDR Form U-4, or its successor, for each investment adviser representative together with evidence that the investment adviser representative has satisfied the qualification requirements of 3 AAC 08.013;
- (4) applicable fees for the applicant and each investment adviser representative as set out in 3 AAC 08.015.

(k) Unless the administrator makes the application effective earlier, the registration for initial state investment adviser registration is effective at noon on the thirtieth day after an application is filed if

- (1) the applicable fee set out under 3 AAC 08.015 has been paid;
- (2) a denial order is not in effect concerning the applicant;
- (3) a proceeding is not pending under AS 45.55.060 concerning the applicant; and
- (4) the administrator has not initiated an investigation of the application under AS 45.55.910.

(l) Unless the administrator has set an earlier date, initial registration of the investment adviser representative is effective as follows:

(1) if the investment adviser representative is not seeking dual registration and has indicated no affirmative response to any part of question 22 of NASDR Form U-4, or its successor, the application for registration becomes effective as of the date of effectiveness of the registration of the state investment adviser if both applications are submitted together, or as of the date that the administrator receives all required items in this section and applicable fees if the state investment adviser is already registered under AS 45.55;

(2) if the investment adviser representative is not seeking dual registration and has indicated an affirmative response to any part of question 22 of NASDR Form U-4, or its successor, the registration is effective at noon of the thirtieth day after the application and items in (j)(3) and (j)(4) of this section are filed with the administrator if the registration as a state investment adviser is already effective; and

- (A) a denial order is not in effect;
- (B) a proceeding is not pending under AS 45.55.060; and
- (C) the administrator has not initiated an investigation of the application under AS 45.55.910.

(m) A federal covered adviser may file an initial notice to provide advisory services in this state by submitting an optional cover letter stating the notice of intent to provide advisory services as a federal covered adviser and filing the following with the administrator:

- (1) a complete, current, signed SEC Form ADV, or its successor, as filed with the SEC, and a copy of the most current SEC Schedule I, or its successor;
- (2) a complete, current, and signed NASDR Form U-4, or any similar document as filed with the SEC, for each investment adviser representative having a

place of business in this state and evidence that the investment adviser representative has satisfied the qualification requirements of 3 AAC 08.013; and

(3) applicable fees for the federal covered adviser filing notice, and for each investment adviser representative as set out in 3 AAC 08.015.

(n) The initial notice given by federal covered adviser is effective as of the date of receipt of the notice by the administrator, or the date of filing with the SEC, whichever is later. The initial registration for investment adviser representatives of the federal covered adviser is effective in a manner essentially the same as for investment adviser representatives of state investment advisers described in (l) of this section.

(o) The administrator will, in the administrator's discretion, request the applicant to submit additional exhibits or information not specifically required but essential to a full presentation of all material facts relating to an applicant's qualifications. The applicant shall furnish to the administrator and properly identify as the additional exhibits or information requested by the administrator. The applicant may also furnish any other exhibits or information desired relating to the applicant's qualifications.

(p) The administrator will consider an application withdrawn if the

(1) application has been on file with the administrator for three months; and

(2) applicant has made no attempt to pass the required qualifying examination, if any. (Eff. 2/20/72, Register 41; am 10/1/1999, Register 151)

Authority: AS 45.55.040 AS 45.55.050 AS 45.55.060 AS 45.55.950

3 AAC 08.012. EXEMPTIONS FROM QUALIFYING EXAMINATION. The administrator will, in the administrator's discretion, exempt an applicant or a class of applicants from passing a qualifying examination required by AS 45.55 or this chapter, if granting the exemption is consistent with the purposes intended by policy and AS 45.55. (Eff. 10/1/1999, Register 151)

Authority: AS 45.55.040 AS 45.55.050 AS 45.55.060 AS 45.55.950

3 AAC 08.013. QUALIFICATION REQUIREMENTS FOR REGISTRATION OF INVESTMENT ADVISER REPRESENTATIVES. (a) Except as provided in (b) of this section, a person applying for registration as an investment adviser representative shall provide the administrator with proof that the applicant has successfully passed

(1) for an application filed on or before December 31, 1999,

(A) the NASDR Series 63 and Series 65 examinations; or

(B) the NASDR Series 66 examination.

(2) for an application filed after December 31, 1999, the new modified versions, developed by the North American Securities Administrators Association of the following:

(A) the NASDR Series 65 examination (Uniform Investment Adviser Law Examination); or

(B) the NASDR Series 7 examination (General Securities Representative Examination) and the NASDR Series 66 examination (Uniform Combined State Law Examination).

(b) The administrator will waive the examination requirements of (a) of this section if, at the time that the application is filed with the administrator, the applicant

(1) has earned and currently holds in good standing the professional designation of

(A) chartered financial analyst (CFA) of the Institute of Chartered Financial Analysts of the Association for Investment Management and Research;

(B) chartered financial consultant (ChFC) of the American College of Bryn Mawr;

(C) certified financial planner (CFP) of the Certified Financial Planner Board of Standards;

(D) chartered investment counselor (CIC) of the Investment Counsel Association of America;

(E) certified investment management analyst (CIMA) of the Investment Management Consultants Association;

(F) personal financial specialist (PFS) of the American Institute of Certified Public Accountants;

(G) another professional organization accepted by the administrator upon the written request of the state investment adviser or federal covered adviser employing the applicant; or

(H) another professional organization accepted by the administrator that was adopted by a membership vote of NASAA;

(2) is filing for renewal of a current registration of an investment adviser representative issued by this state, unless the current registration was issued based on the waiver under this subsection and the applicant desires to register without being limited to the solicitation of business;

(3) is employed by the state investment adviser or federal covered adviser only to solicit business, if the applicant does not provide any other services as an investment adviser representative other than to solicit business.

(c) A person who is registered as a state investment adviser or an investment adviser representative or is noticed as a federal covered adviser in any jurisdiction in the United States on December 31, 1999 is not required to satisfy the examination requirements of (a) of this section for continued registration, except that the administrator may require additional examinations for any person found to have violated any state or federal securities law. If the person's current registration was issued based on the waiver granted by (b)(3) of this section or a similar waiver in this or any other jurisdiction and the person intends to offer services of an investment adviser representative in addition to soliciting business, the person must meet the examination requirements of (a) of this section before offering those services.

(d) Notwithstanding (c) of this section, on or after January 1, 2000, a person applying for registration as an investment adviser representative, who has not been registered as a state investment adviser or investment adviser representative or has not been noticed as a federal covered adviser in any jurisdiction in the United States for a period of 24 consecutive months immediately before applying for a license in this state, is required to satisfy the examination requirements of (a)(2) of this section notwithstanding having previously passed the examination requirements of (a)(1) or (2) of this section unless the applicant

(1) files a written request for waiver of the examination requirement and the administrator grants the request in writing; or

(2) is exempt from the examination requirement through a waiver granted under (b) of this section.

(e) In this section, "solicit business" means to offer or negotiate for the sale of investment advisory services of the state investment adviser or federal covered adviser. (Eff. 10/1/1999, Register 151)

Authority: AS 45.55.040 AS 45.55.050 AS 45.55.060 AS 45.55.950

3 AAC 08.014. RENEWAL OF REGISTRATION OR NOTICE; EFFECTIVE DATE OF RENEWAL OR NOTICE. (a) The administrator will, in the administrator's discretion, renew a registration of a broker-dealer, agent of a broker-dealer, or agent of an issuer as follows:

(1) an issuer or a broker-dealer that is also not registered with NASD or required by federal law to be registered with NASD may renew the registration of its agents by filing with the administrator a signed, complete NASDR Form U-4, or its successor, with "AK" checked, together with the applicable fee set out in 3 AAC 08.015;

(2) a broker-dealer that is also not registered with NASD or required to be registered with NASD may renew its registration by filing with the administrator a signed copy of the SEC Form BD together with the applicable fee set out in 3 AAC 08.015;

(3) a broker-dealer who is also registered with NASD shall renew its registration under this chapter and that of its agents through the CRD, or any successor system, and shall comply with applicable NASD rules regarding filing requirements, dates, and payments of applicable fees set out in 3 AAC 08.015; and

(4) the administrator will consider an application for renewal of registration as filed with the administrator on the day on which notice of intention to renew is received by the administrator from the NASD; the effective date of renewal of registrations filed through the CRD system is January 1, unless otherwise ordered by the administrator.

(b) A state investment adviser may renew its registration by submitting no later than December 1 of each year the following with the administrator:

(1) a complete, current, signed SEC Form ADV, or its successor;

(2) a surety bond on State of Alaska Form 08-100, or its successor, if required by 3 AAC 08.025;

(3) a list of the names and CRD numbers, if applicable, of currently registered investment adviser representatives previously approved by the administrator, with signed NASDR Form U-4, or its successor, showing any changes from an earlier submission;

(4) a complete, current, and signed NASDR Form U-4, or its successor, for each new applicant for investment adviser representative and evidence that the applicant for investment adviser representative has satisfied the qualification requirements of 3 AAC 08.013; and

(5) applicable fees for the state investment adviser applicant and each investment adviser representative as set out in 3 AAC 08.015.

(c) The effective date of renewal of registrations for state investment advisers and for their investment adviser representatives is January 1, unless otherwise ordered by the administrator.

(d) A federal covered adviser may renew its notice filing by providing no later than December 1 of each year an optional cover letter stating the renewal of notice of intent to provide advisory services as a federally covered adviser and by submitting the following with the administrator

(1) a signed page 1 of SEC Form ADV, and a copy of the most recent Schedule I, or its successor, for the federal covered adviser;

(2) a list of the names and CRD numbers, if applicable, of currently registered investment adviser representatives previously approved by this state, with signed NASDR Form U-4, or any similar document as filed with the SEC, showing any changes from the information submitted previously to the administrator;

(3) a complete, current, and signed NASDR Form U-4, or any similar document as filed with the SEC, for each new investment adviser representative having a place of business in this state together with evidence that the investment adviser representative has satisfied the qualification requirements of 3 AAC 08.013; and

(4) applicable fees for the federal covered adviser to file renewal of notice and for each investment adviser representative as set out in 3 AAC 08.015.

(e) The effective date of renewal of a federal covered adviser notice and a renewal of registration for their investment adviser representatives is January 1, unless otherwise ordered by the administrator.

(f) If a registration for a broker-dealer, agent, state investment adviser, or investment adviser representative or a notice filing by a federal covered adviser is expired for one year or more, a holder of the expired registration or notice who wishes to reactivate it

(1) may not use the renewal procedures in this section; and

(2) must submit an initial application for registration or an initial notice as required by 3 AAC 08.011. (Eff. 10/1/99, Register 151)

Authority: AS 45.55.040 AS 45.55.050 AS 45.55.060 AS 45.55.950

3 AAC 08.015. FEES AND ASSESSMENTS. (a) The following fees are established for registration of broker-dealers, agents, investment adviser representatives, and state investment advisers, and for filing of notices of federal covered advisers:

(1) application fee for an initial or annual renewal registration or notice, for

(A) a broker-dealer, \$250;

(B) an agent of a broker-dealer or issuer, \$75;

(C) an investment adviser representative, \$75;

(D) a state investment adviser, \$250;

(E) a federal covered adviser, \$250;

(2) application fee for registration or notice of a successor, for a

(A) registered broker-dealer, \$125;

(B) registered state investment adviser, \$125;

(C) noticed federal covered adviser, \$125;

(3) application fee for a broker-dealer or issuer to transfer the unexpired portion of registration of an agent, \$75;

(4) application fee for a successor state investment adviser or successor federal covered adviser to transfer the unexpired portion of registration of an investment adviser, \$75.

(b) For an initial or annual examination, or for an investigation conducted under AS 45.55.910, the administrator will assess to the issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or state investment adviser who is the subject of the examination or investigation, a fee of \$150 plus the proportionate part of the actual travel expenses and per diem incurred by each

examiner while away from the examiner's duty station. The assessment will be made as soon as possible after the examination or investigation has been completed, and payment of the assessment must be received by the department within 30 days after the assessment is mailed to the subject of the examination or investigation.

(c) Fees paid or assessed under this section are nonrefundable. The fees must be paid by check, money order, or another payment form approved by the administrator and made payable to the State of Alaska. (Eff. 9/8/91, Register 119; am 10/1/1999, Register 151)

Authority: AS 45.55.040 AS 45.55.910 AS 45.55.915

3 AAC 08.016. TRANSFERRED OR SUCCESSOR REGISTRATION OR NOTICE. (a) A broker-dealer or an issuer may apply to the administrator to transfer its agent's registration in order to transfer the business of the agent to other registered broker-dealers or issuers. The agent may not conduct the business of an agent after transfer until the transferred registration is effective under this chapter.

(b) A broker-dealer or issuer who is also not registered with NASD or required by federal law to be registered with NASD shall transfer an agent's affiliation from another broker-dealer or issuer by filing with the administrator a signed, complete NASDR Form U-4, or its successor, with "AK" checked, together with the applicable fee as provided in 3 AAC 08.015.

(c) A broker-dealer that is a member of NASD or is required by federal law to be a NASD member shall transfer an agent's affiliation from another NASD broker-dealer by filing the appropriate application with the CRD, or any successor system, and shall comply with applicable NASD rules regarding filing requirements, dates, and payments of applicable fees set out in 3 AAC 08.015. An application filed under this subsection is processed as an initial application in accordance with 3 AAC 08.010 and 3 AAC 08.011.

(d) A registered broker-dealer may register a successor by filing with the administrator the following:

(1) a current, complete, and signed copy of SEC Form BD, or its successor, with "AK" checked;

(2) a list of registered agents associated or to be associated with the successor broker-dealer;

(3) the applicable fee under 3 AAC 08.015 for each agent for applying for transfer of registration;

(4) if the successor is a broker-dealer who is also registered with NASD, the application for transfer of agents must be filed and processed through the CRD system, or any successor system.

(e) If a broker-dealer succeeds to and continues the business of another broker-dealer, the registration of the predecessor broker-dealer is effective as the registration of the successor broker-dealer for 60 days after that succession or until the last day of the calendar year, whichever is sooner, but only if the successor broker-dealer has filed the SEC Form BD, or its successor, with the administrator within 30 days after the succession or before the last day of the calendar year, whichever occurs earlier.

(f) If a broker-dealer partnership that is not registered with the administrator succeeds to and continues the business of a predecessor partnership that was registered as a broker-dealer and files an SEC Form BD, or its successor, with the administrator to reflect changes in the partnership the administrator will treat a SEC

Form BD, or its successor, as an application for registration under this chapter. The administrator will take this action even though the form filed may be designated as an amendment to an existing registration of the predecessor partnership under this chapter.

(g) A registered state investment adviser or federal covered adviser that filed notice under this chapter may register or notice a successor by filing the following:

(1) a current, complete, and signed copy of SEC Form ADV, or its successor, and, in the case of a federal covered adviser, a copy of the most current SEC Schedule I, or its successor;

(2) a list of the names and CRD numbers, if applicable, of currently registered investment adviser representatives previously approved by this state associated or to be associated with the successor;

(3) for an initial application for investment adviser representative, a complete, current, and signed NASDR Form U-4, or its successor, together with evidence the investment adviser representative has satisfied the qualification requirements of 3 AAC 08.013; and

(4) applicable fees for each initial application for registration as an investment adviser representative and for the transfer registration or notice fee as provided in 3 AAC 08.015.

(h) If a state investment adviser registered under this chapter or a federal covered adviser that filed notice under this chapter succeeds to and continues the business of another state investment adviser registered under this chapter or a federal covered adviser that filed notice under this chapter, the registration or notice of the predecessor is effective as the registration or notice of the successor for the unexpired portion of the predecessor's registration or notice. If, after the succession, the resulting entity is a federal covered adviser, the notice of succession remains valid as the filing of notice required of a federal covered adviser, whether the predecessor had been registered under AS 45.55 as a state investment adviser or noticed as a federal covered adviser.

(i) The administrator will treat a SEC Form ADV as an application for registration or notice even though the form was designated as an amendment if

(1) the form was filed by a state investment adviser partnership or federal covered adviser partnership that is not registered or noticed when the form was filed;

(2) the partnership described in (1) of this subsection succeeds to and continues the predecessor partnership registered as a state investment adviser or noticed as a federal covered adviser; and

(3) the form was filed to reflect the changes in partnership and to furnish required information concerning any new partners. (Eff. 10/1/1999, Register 151)

Authority: AS 45.55.040 AS 45.55.050 AS 45.55.060 AS 45.55.950

3 AAC 08.017. CENTRAL REGISTRATION DEPOSITORY SYSTEM. (a)

Notwithstanding any contrary provision of 3 AAC 08.005 -- 3 AAC 08.070, if the administrator approves a central registration depository system for filing notices or applications for registrations under this chapter, a person shall file a notice or an application under this chapter with the system. The person must meet other requirements of the system, including the payment of applicable fees set out in 3 AAC 08.015. If a notice or an application is filed with the system in accordance with this chapter, the administrator will consider the application as filed when the administrator

receives notice from the system of the person's filing of a notice or an application demonstrating the person's intent to give notice or register.

(b) The administrator will, in the administrator's discretion, waive any procedural requirements specified in this chapter if the administrator determines that the waiver is

(1) necessary to facilitate the operations of the central registration depository system;

(2) consistent with AS 45.55 and its purposes; and

(3) in the public interest. (Eff. 10/1/1999, Register 151)

Authority: AS 45.55.040

AS 45.55.050

AS 45.55.950

3 AAC 08.018. AMENDMENTS TO FILINGS. (a) A person registered under this chapter shall promptly file with the administrator amendments to the person's filings to ensure that information remains current and correct in the files of the administrator. The amendments required to be filed with the administrator under this section include amendments to SEC Form BD, SEC Form ADV, or NASDR Form U-4.

(b) A federal covered adviser shall file with the administrator a copy of any amendment to SEC Form ADV at the same time that the person files an amendment with the SEC.

(c) If a material change as set out in 3 AAC 08.050(a)-(b) occurs, a person registered under this chapter or a federal covered adviser shall file with the administrator an amendment as required in 3 AAC 08.050(b). (Eff. 10/1/99, Register 151)

Authority: AS 45.55.040

AS 45.55.050

AS 45.55.950

3 AAC 08.021. FINANCIAL REPORTS, MINIMUM CAPITAL REQUIREMENTS, BONDS, AND RECORD KEEPING REQUIREMENTS OF BROKER-DEALERS. (a) A broker-dealer registered or required to be registered under AS 45.55 shall comply with the net capital requirements for brokers and dealers set out in 17 C.F.R. 240.15c3-1, the rules on use of customer free-credit balances set out in 17 C.F.R. 240.15c3-2, and the customer-protection reserves and custody of securities requirements set out in 17 C.F.R. 240.15c3-3.

(b) A broker-dealer registered or required to be registered under AS 45.55 shall comply with 17 C.F.R. 240.17a-11, and shall file with the administrator upon request copies of all reports and notices required under 17 C.F.R. 240.17a-5, 17 C.F.R. 240.17a-10, and 17 C.F.R. 240.17a-11. The administrator will, in the administrator's discretion, by order restrict or condition the broker-dealer's right to transact business in this state as the administrator finds appropriate for the protection of investors.

(c) If the SEC amends a federal regulation with which a broker-dealer must comply under (a) or (b) of this section, a broker-dealer in compliance with that federal regulation as amended is not subject to an enforcement action by the administrator for violation of this section, if the violation results solely from the broker-dealer's compliance with that federal regulation as amended.

(d) A broker-dealer registered or required to be registered under AS 45.55 whose business is exclusively within this state, who does not make use of a facility of a national securities exchange, and who is not registered under 15 U.S.C. 78o (sec. 15 of the Securities Exchange Act of 1934), shall post a surety bond on the form prescribed by the administrator in an amount not less than \$35,000. A deposit of cash or liquid

securities acceptable to the administrator may be posted with the administrator in place of the bond. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.040 AS 45.55.050 AS 45.55.060 AS 45.55.950

3 AAC 08.025. BONDING REQUIREMENTS FOR CERTAIN STATE INVESTMENT ADVISERS. (a) A state investment adviser registered or required to be registered under AS 45.55 that has custody of client funds or securities shall be bonded in the amount of \$35,000.

(b) A state investment adviser registered or required to be registered under AS 45.55 that has discretionary authority over, but does not have custody of, client funds or securities shall be bonded in the amount of \$10,000.

(c) A state investment adviser that has its principal place of business in a state other than this state is exempt from the requirements of this section, if the state investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with that state's bonding requirements.

(d) The administrator will only accept a bond as meeting the requirements of this section if the bond is

(1) issued by a company qualified to do business in this state;

(2) issued on State of Alaska Form 08-100, or other form acceptable to the administrator; and

(3) subject to the claims of all clients of the state investment adviser regardless of the client's state of residence.

(e) The administrator will, in the administrator's discretion, waive all or part of the requirements of this section if

(1) the state investment adviser submits a written application showing good cause for the waiver; and

(2) the administrator determines that the waiver is consistent with AS 45.55 and its purposes and is in the public interest. (Eff. 3/24/76, Register 57; am 10/1/1999, Register 151)

Authority: AS 45.55.040 AS 45.55.050 AS 45.55.060 AS 45.55.950

3 AAC 08.027. MINIMUM FINANCIAL REQUIREMENTS FOR STATE INVESTMENT ADVISERS. (a) A state investment adviser registered or required to be registered under AS 45.55 that is not required to be bonded under 3 AAC 08.025 shall maintain a positive net worth at all times.

(b) A state investment adviser registered or required to be registered under AS 45.55 that does not otherwise have custody of or discretionary authority over client funds or securities requiring a bond under 3 AAC 08.025, but that accepts prepayment of more than \$500 per client and six or more months in advance, shall maintain a positive net worth at all times.

(c) As a condition of the right to continue to transact business in this state, if the net worth of a state investment adviser registered or required to be registered under AS 45.55 that is not bonded under 3 AAC 08.025 becomes negative, the state investment adviser shall notify the administrator of that fact by the close of business on the next business day, unless the state investment adviser receives a waiver from the administrator. A state investment adviser registered or required to be registered under AS 45.55 that is required to be bonded under 3 AAC 08.025 shall notify the administrator by the close of business on the next business day if the state investment

adviser's net worth is less than the amount of the bond required under 3 AAC 08.025. After transmitting a notice required by this subsection, the state investment adviser shall file with the administrator by the close of business on the next business day a report of the state investment adviser's financial condition, including the following:

- (1) a trial balance of all ledger accounts;
- (2) a statement of all client funds or securities which are not segregated;
- (3) a computation of the aggregate amount of client ledger debit balances; and
- (4) a statement as to the number of client accounts.

(d) For purposes of this section, "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles; for purposes of this subsection, assets do not include

- (1) prepaid expenses, other than items properly classified as current assets under generally accepted accounting principles;
- (2) deferred charges;
- (3) goodwill;
- (4) franchise rights;
- (5) organizational expenses;
- (6) patents;
- (7) copyrights;
- (8) marketing rights;
- (9) unamortized debt;
- (10) discount and expense;
- (11) assets of an intangible nature;
- (12) a personal residence;
- (13) home furnishings;
- (14) automobiles;
- (15) an individual's personal belongings, if not readily marketable;
- (16) a corporation's advances or loans to shareholders and officers; and
- (17) a partnership's advances or loans to partners.

(e) The administrator will, in the administrator's discretion, require that a current appraisal be submitted in order to establish the worth of an asset.

(f) A state investment adviser that has its principal place of business in a state other than this state is exempt from the requirements of this section, if the state investment adviser is registered as an investment adviser in the state in which it has its principal place of business and is in compliance with that state's minimum capital requirements.

(Eff. 3/24/76, Register 57; am 4/19/2000, Register 154)

Authority: AS 45.55.040 AS 45.55.050 AS 45.55.060 AS 45.55.950

3 AAC 08.029. CUSTODY OF CLIENT FUNDS OR SECURITIES BY STATE INVESTMENT ADVISERS. (a) A state investment adviser may not take custody of client funds or securities unless

- (1) the state investment adviser notifies the administrator in writing that the state investment adviser has or may have custody; notification may be given on SEC Form ADV;
- (2) the securities of each client are segregated, marked to identify the particular client having the beneficial interest in the security, and held in safekeeping in a place reasonably free from risk of destruction or other loss;

(3) all client funds are deposited in one or more bank accounts that contain only client funds, and

(A) each account is maintained in the name of the state investment adviser as agent or trustee for the clients; and

(B) the state investment adviser maintains a separate record for each account that shows the name and address of the bank where the account is maintained, the dates and amounts of deposits to and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;

(4) the state investment adviser, immediately after accepting custody of funds or securities from a client, notifies the client in writing of the place and the manner in which the funds and securities will be maintained, and thereafter immediately notifies the client in writing of any changes in the place or the manner in which the funds or securities are maintained;

(5) the state investment adviser, at the end of every three months, sends each client an itemized statement showing the funds and securities in the state investment adviser's custody and each debit, credit, and transaction in the client's account during the period; and

(6) at least once every calendar year,

(A) an independent certified public accountant or public accountant

(i) verifies all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the state investment adviser; and

(ii) issues a report stating that the accountant has made an examination of all client funds and securities and describing the nature and extent of the examination; and

(B) the report prepared under (A)(ii) of this paragraph is filed with the administrator promptly after each examination.

(b) This section does not apply to a state investment adviser also registered as a broker-dealer under 15 U.S.C. 78o (sec. 15 of the Securities Exchange Act of 1934) if the broker-dealer is

(1) subject to and in compliance with 17 C.F.R. 240.15c3-1 (Net Capital Requirements for Brokers or Dealers); or

(2) a member of an exchange whose members are exempt from 17 C.F.R. 240.15c3-1, as provided in 17 C.F.R. 240.15c3-1(b), and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers. (Eff. 3/24/76, Register 57; am 4/19/2000, Register 154)

Authority: AS 45.55.020 AS 45.55.040 AS 45.55.050 AS 45.55.060 AS 45.55.950

3 AAC 08.030. BOOKS AND RECORDS OF BROKER-DEALERS. (a) Unless otherwise provided by order of the SEC, a broker-dealer registered or required to be registered under AS 45.55 shall make the following books and records and keep them true, accurate, and current:

(1) copies of confirmations of transactions required by 17 C.F.R. 240.10b-10;

(2) all records required to be maintained by 17 C.F.R. 240.17a-3 and 17 C.F.R. 240.17a-4; and

(3) all records required to be maintained by any self-regulatory organization or exchange of which the broker-dealer is a member;

(4) all records required to be maintained by 17 C.F.R. 240.15c2-11.

(b) If the SEC amends a federal regulation with which a broker-dealer must comply under (a) of this section, a broker-dealer in compliance with that federal regulation as amended is not subject to an enforcement action by the administrator for violation of this section, if the violation results solely from the dealer's compliance with that federal regulation as amended. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.050

AS 45.55.060

AS 45.55.950

3 AAC 08.040. BOOKS AND RECORDS OF STATE INVESTMENT

ADVISERS. (a) A state investment adviser registered or required to be registered under AS 45.55 shall make the following books and records and keep them true, accurate, and current:

(1) journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;

(2) general and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts;

(3) a memorandum of each order given by the state investment adviser for the purchase or sale of a security, of any instruction received by the state investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security, and of any modification or cancellation of an order or instruction; the memorandum must

(A) show the terms and conditions of the order, instruction, modification, or cancellation;

(B) identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order;

(C) show the account for which the order was entered, the date of entry, and the bank, broker, or dealer by or through whom the order was executed, if applicable; and

(D) designate that the order was entered under the exercise of discretionary power, if discretionary power was exercised;

(4) all check books, bank statements, cancelled checks, and cash reconciliations of the state investment adviser;

(5) all bills or statements, or copies of them, paid or unpaid, relating to the state investment adviser's business as an investment adviser;

(6) all trial balances, financial statements, and internal audit working papers relating to the state investment adviser's business as an investment adviser;

(7) the original of each written communication received and a copy of each written communication sent by the state investment adviser,

(A) and relating to

(i) a recommendation made or proposed to be made or advice given or proposed to be given;

(ii) the receipt, disbursement, or delivery of funds or securities; or

(iii) the placing or execution of any order to purchase or sell

any security; and

(B) except that

(i) the state investment adviser is not required to keep unsolicited market letters or other similar communications of general public distribution not prepared by or for the state investment adviser; and

(ii) if the state investment adviser sends a notice, circular, or other advertisement offering a report, analysis, publication, or other advisory service to more than 10 persons, the state investment adviser is not required to keep a record of the names and addresses of the persons to whom the notice, circular, or advertisement was sent; however, if the notice, circular, or advertisement is distributed to persons named on a list, the state investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source;

(8) a list or other record of each client account, identifying those accounts in which the state investment adviser is vested with discretionary power with respect to the funds, securities, or transactions of a client;

(9) a copy of a power of attorney and other evidence of the granting of any discretionary authority by a client to the state investment adviser;

(10) a copy in writing of each agreement entered into by the state investment adviser with a client, and any other written agreements otherwise relating to the business of the state investment adviser as an investment adviser;

(11) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including a communication by electronic media, that the state investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the state investment adviser; if a communication listed in this paragraph recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, the state investment adviser shall include a memorandum indicating the reasons for the recommendation;

(12) a record of each transaction in a security in which the state investment advisor or any advisory representative has, or by reason of any transaction acquires, direct or indirect beneficial ownership; the record must state the title and amount of the security involved, the date of the transaction, whether the transaction was a purchase, sale, or other acquisition or disposition, the price at which the transaction was effected, and the name of the broker, dealer, or bank with or through whom the transaction was effected; the record may also contain a statement declaring that the reporting or recording of any transaction may not be construed as an admission that the state investment adviser or advisory representative has a direct or indirect beneficial ownership in the security; a transaction must be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected; however, a state investment adviser

(A) need not make or keep a record of a transaction

(i) effected in any account over which the state investment advisor or an advisory representative lacks direct or indirect influence or control; or

(ii) in securities that are direct obligations of the United States; and

(B) does not violate this paragraph because of the failure to record a securities transaction of an advisory representative if the state investment adviser establishes that adequate procedures were instituted and reasonable diligence was used to obtain reports of each transaction required to be recorded;

(13) a copy of each written disclosure statement and each amendment or revision to that statement given or sent to a client or prospective client of the state investment adviser in accordance with the provisions of 17 C.F.R. 275.204-3 and a record of the dates that each written disclosure statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client;

(14) for each client that the state investment adviser obtained by means of a solicitor to whom a cash fee was paid by the state investment adviser

(A) evidence of a written agreement to which the state investment adviser is a party related to the payment of the fee; a written agreement that satisfies the requirements of 17 C.F.R. 275.206(4)-3(a) also satisfies the requirements of this subparagraph;

(B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the

(i) state investment adviser's written disclosure statement given or sent in accordance with 17 C.F.R. 275.204-3; and

(ii) solicitor's written disclosure statement given or sent in accordance with 17 C.F.R. 275.206(4)-3; and

(C) a copy of the solicitor's written disclosure statement given or sent in accordance with 17 C.F.R. 275.206(4)-3;

(15) all accounts, books, internal working papers, and other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including a communication by electronic media, that the state investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the state investment adviser; however, with respect to the performance of a managed account, the retention of the following items satisfies the requirements of this paragraph:

(A) each account statement, if it reflects all debits, credits, and other transactions in a client's account for the period of the statement; and

(B) each worksheet necessary to demonstrate the calculation of the performance or rate of return of the managed accounts;

(16) a copy of all communications received or sent regarding any litigation related to a written customer or client complaint involving the state investment adviser, an investment adviser representative, or an employee of the state investment adviser or investment adviser representative;

(17) written information about each advisory client that is the basis for making a recommendation or providing investment advice to that client;

(18) written procedures for the supervision of the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations;

(19) a copy of each document, other than a notice of general dissemination, that was filed with or received from a state or federal agency or self-

regulatory organization and that pertains to the state investment adviser or to an advisory representative within the meaning set out in (l)(1)(A) of this section; documents to be kept under this paragraph include applications, amendments, renewal filings, and correspondence.

(b) If a state investment adviser has custody of client funds or securities, the state investment adviser shall, in addition to the books and records required under (a) of this section, make the following books and records and keep them true, accurate, and current:

(1) a journal or other record showing all purchases, sales, receipts, and deliveries of securities for all accounts and all other debits and credits to the accounts;

(2) a separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

(3) copies of confirmations of all transactions effected by or for the account of each client; and

(4) a record for each security in which a client has a position showing the name of each client having an interest in the security, the amount invested or interest of each client in the security, and the location of the security.

(c) A state investment adviser who renders an investment supervisory or management service to a client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the state investment adviser, make and keep true, accurate, and current

(1) records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale; and

(2) for each security in which a client has a current position, information from which the state investment adviser can promptly furnish the name of the client, and the current amount or interest of the client.

(d) A state investment adviser may maintain books or records required by this section so that the identity of a client to whom the state investment adviser renders investment supervisory services is indicated by a numerical or alphabetical code or a similar designation.

(e) A state investment adviser shall preserve the following records in the following manner:

(1) records required by (a)(1)-(10), (a)(12)-(14), (b), and (c)(1) of this section shall be maintained and preserved in an easily accessible place for not less than five years after the end of the fiscal year during which the last entry was made on the record; for the first two years, those records shall be kept in the state investment adviser's principal place of business;

(2) partnership articles and any amendments to them, articles of incorporation, charters, minute books, and stock certificate books of the state investment adviser and of any predecessor shall be maintained in state investment adviser's principal place of business and shall be preserved until at least three years after termination of the enterprise;

(3) each record required by (a)(11) and (a)(15) of this section shall be maintained and preserved in an easily accessible place for not less than five years after the end of the fiscal year during which the state investment adviser last published or otherwise disseminated that record, directly or indirectly; for the first two years, that record shall be kept in the state investment adviser's principal place of business; and

(4) each record required by (a)(16)-(19) of this section shall be maintained and preserved in an easily accessible place for not less than five years after the end of the fiscal year during which the last entry was made on the record; for the first two years, that record shall be kept in the state investment adviser's principal place of business; however, that record need be kept only for the period during which the state investment adviser was registered or required to be registered in this state, if that period is less than the five-year period required by this paragraph.

(f) If a state investment adviser provides a client advisory services at a place of business other than the state investment adviser's principal place of business, the state investment adviser shall maintain, for the applicable period set out in (e) of this section, the following records or copies of those records at the place of business of the state investment adviser from which the client receives advisory services:

(1) records required by (a)(3), (a)(7)-(10), (a)(13)-(14), (a)(16)-(18), (b), and (c) of this section;

(2) records required by (a)(11) and (a)(15) of this section, if those records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number.

(g) A state investment adviser, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the applicable period specified in (e) of this section, and shall notify the administrator in writing of the exact address where those books and records will be maintained during the remainder of that period.

(h) Records required to be maintained and preserved under this section may be maintained and preserved by photographic process on magnetic disk, tape, or other computer storage medium, and may be maintained and preserved in that form for the applicable period required by (e) or (f) of this section. If records are produced or reproduced by a photographic film or computer storage medium, the state investment adviser shall

(1) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

(2) be ready at all times to provide promptly any facsimile enlargement of film, computer printout, or copy of the computer storage medium that the administrator or the administrator's representative requests;

(3) store, separately from the original, at least one copy of the film or computer storage medium for the applicable period required by (e) or (f) of this section;

(4) with respect to records stored on a computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction;

(5) with respect to records stored on photographic film, and for purposes of examining those records, at all times have available facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements; and

(6) with respect to records which, in the ordinary course of the state investment adviser's business, are created by the state investment adviser on electronic media or are received by the state investment adviser solely on electronic media or by electronic data transmission, be able to electronically display and immediately produce

printed copies of those records.

(i) If a state investment adviser is engaged in more than one enterprise or activity the state investment adviser shall maintain separate books of accounts and records for the investment advisory business and the other businesses. The books and records must clearly identify the division among these businesses of income, expenses, and assets.

(j) A book or other record made, kept, maintained, and preserved in compliance with 17 C.F.R. 240.17a-3 and 17 C.F.R. 240.17a-4 that is substantially the same as a book or other record required to be made, kept, maintained, and preserved under this section, satisfies the applicable record-keeping requirement of this section.

(k) A state investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state is exempt from the requirements of this section, if the state investment adviser

(1) is registered or licensed as an investment adviser in the state in which it maintains its principal place of business; and

(2) is in compliance with the applicable books and records requirements of the state in which it maintains its principal place of business.

(l) In this section,

(1) “advisory representative,” if the state investment adviser is primarily engaged in a business

(A) providing services to advisory clients, means

(i) a partner, officer, or director of the state investment adviser;

(ii) an employee of the state investment adviser who makes a recommendation or takes part in determining which recommendation is to be made, or whose functions or duties relate to the determination of which securities are to be recommended before the effective dissemination of the recommendations; and

(iii) a person who obtains information concerning securities recommendations by the state investment adviser before the effective dissemination of the recommendations, if the person who obtains the information is in a control relationship to the state investment adviser, is an affiliated person of that controlling person, or is an affiliated person of that affiliated person;

(B) other than providing services to advisory clients, means

(i) a partner, officer, director, or employee of the state investment adviser who makes a recommendation or takes part in determining which recommendation is to be made, or whose functions or duties relate to the determination of which securities are to be recommended before the effective dissemination of the recommendations; and

(ii) a person who obtains information concerning securities recommendations by the state investment adviser before the effective dissemination of the recommendations, if the person who obtains the information is in a control relationship to the state investment adviser, is an affiliated person of that controlling person, or is an affiliated person of that affiliated person;

(2) “control” means the power to exercise a controlling influence over the

management or policies of a company, unless that power is solely the result of an official position with that company; a person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company is presumed to control that company;

(3) "discretionary power" does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the state investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security;

(4) "financial statements" means a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, and a cash flow statement;

(5) "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client;

(6) "solicitor" means a person who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(m) For purposes of (l)(1)(B) of this section, a state investment adviser is primarily engaged in a business other than providing services to advisory clients if, for each of its most recent three fiscal years or for the period of time since organization, whichever period is shorter, the state investment adviser derived from that other business, on an unconsolidated basis, more than 50 percent of the state investment adviser's

(1) total sales and revenues; and

(2) income or loss before income taxes and extraordinary items. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.050

AS 45.55.060

AS 45.55.950

3 AAC 08.042. BOOKS AND RECORDS OF AGENTS OF ISSUERS. An agent of an issuer registered or required to be registered under AS 45.55.030 shall make, maintain, and preserve for a period of not less than three years records containing the following information:

(1) copies of all writings confirming the sale or purchase of securities;

(2) the date and amount of each cash receipt or disbursement associated with a sale or purchase of securities;

(3) for each sale or purchase of securities, the number of shares or units involved, the certificate numbers, and the date each was delivered to or received from the investor. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.950

3 AAC 08.050. EFFECTIVENESS AND POST-EFFECTIVE REQUIREMENTS.

(a) If any information, exhibit, or schedule submitted or circumstance disclosed in an application or notice under 3 AAC 08.011 or 3 AAC 08.014 undergoes a material change, either while the application or notice is pending or while the registration obtained through that application or the notice is effective,

(1) the applicant or person registered under this chapter shall file with the administrator a corrective amendment within 30 days after the day the material change occurred or was discovered, whichever day is later; and

(2) a federal covered adviser shall file with the administrator a corrective amendment at the latest of the following times:

(A) within 30 days after the day the material change occurred;
 (B) within 30 days after the day the material change was discovered;
 (C) on or before the date that a corresponding corrective amendment was filed with the SEC.

(b) For purposes of (a) of this section, a material change includes

(1) for a broker-dealer, state investment adviser, or federal covered adviser,

(A) a change in firm name, ownership, management, or control;
 (B) a change in any of its partners, directors, officers, or persons in similar positions;
 (C) a change in its business address; or
 (D) the creation or termination of a branch office in this state;

(2) a change in the type of entity, general plan, or charter of a broker-dealer or state investment adviser, a change in the method of operation of a broker-dealer or state investment adviser, or a change in the type of securities in which a broker-dealer or state investment adviser deals or trades;

(3) for a state investment adviser, insolvency, dissolution, or liquidation, a material adverse change in or impairment of working capital, or non-compliance with the minimum bond or financial requirements in 3 AAC 08.025 and 3 AAC 08.027, if applicable;

(4) termination of a business or discontinuance of those activities as a broker-dealer, agent, investment adviser representative, state investment adviser, or federal covered adviser;

(5) the filing of a criminal charge or civil action, in which a fraudulent, dishonest, or unethical act is alleged, or a violation of a securities law is involved, against

(A) a person registered as a broker-dealer, agent, state investment adviser, or investment adviser representative;
 (B) a person who submits a notice filing as a federal covered adviser;
 (C) an applicant for registration as a broker-dealer, agent, state investment adviser, or investment adviser representative; or
 (D) a partner, director, or officer of a person listed in (A)-(C) of this paragraph; and

(6) the entry of an order or the initiation of a proceeding by a

(A) court or regulatory agency to

(i) deny, suspend, or revoke a person's registration or application for registration under AS 45.55, this chapter, or applicable federal or state securities laws; or

(ii) enjoin a person listed in (5)(A)-(D) of this subsection from engaging in or continuing any conduct or practice in the securities business;

(B) stock exchange or the NASD to expel from membership a person listed in (5)(A)-(D) of this section, or to enjoin that person from engaging in or continuing any conduct or practice in the securities business.

(c) A registration or notice filing for an agent, investment adviser representative, broker-dealer, state investment adviser, or federal covered adviser expires as provided

in the operating rules of the applicable CRD or on December 31 of the calendar year in which it became effective if no CRD rules apply without notification by the administrator, unless sooner withdrawn or terminated.

(d) Termination of a broker-dealer's registration automatically terminates the registration of an agent of that broker-dealer.

(e) If the agency relationship terminates between an agent and the broker-dealer or issuer for whom the agent is registered,

(1) and the agent commences employment for another broker-dealer or issuer, the

(A) broker-dealer or issuer with whom the agency relationship terminated shall file with the administrator a notice of termination or withdrawal with respect to the prior association; and

(B) new employing broker-dealer or issuer shall file a transfer request with the administrator; and

(2) both the broker-dealer and the agent shall immediately notify the administrator of the circumstances involving the termination.

(f) If a broker-dealer desires to terminate or the administrator terminates a broker-dealer's registration, the broker-dealer shall furnish, upon the request of the administrator and within 10 days after termination, a

(1) detailed statement of the broker-dealer's financial condition, disclosing the nature and amount of assets and liabilities, the broker-dealer's net worth, and unsatisfied judgments and liens against the broker-dealer;

(2) statement of where and in whose custody books and records required under 3 AAC 08.030 will be kept; and

(3) separate schedule of securities in which the broker-dealer has an interest and the market value of those securities.

(g) The termination of a state investment adviser's registration or of a federal covered adviser's notice filing automatically terminates all investment adviser representative registrations of that state investment adviser or federal covered adviser.

(h) A broker-dealer that seeks to withdraw or fails to renew its registration shall file SEC Form BDW or its successor with the administrator or with a central registration depository approved under 3 AAC 08.017. A broker-dealer or an issuer that seeks to terminate or fails to renew the registration of an agent shall file an NASDR Form U-5, or its successor, for that agent with the administrator or with a central registration depository approved under 3 AAC 08.017. A state investment adviser that seeks to withdraw or fails to renew its registration shall file a SEC Form ADV-W, or its successor, with the administrator. A federal covered adviser that seeks to withdraw its notice filing may file a notice to that effect with the administrator or with a central registration depository approved under 3 AAC 08.017 for that purpose. A state investment adviser or federal covered adviser that seeks to withdraw or fails to renew the registration of an investment adviser representative shall file an NASDR Form U-5, or its successor, for that investment adviser representative with the administrator or with a central registration depository approved under 3 AAC 08.017 for that purpose, except that the federal covered adviser shall file whatever form it files with the SEC, for purposes of the withdrawal or failure to renew the registration of an investment adviser representative, if that form is other than the NASDR Form U-5 or its successor. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154; am 10/26/2000, Register 156)

Authority: AS 45.55.030 AS 45.55.040 AS 45.55.050 AS 45.55.950

3 AAC 08.053. DISCLOSURES TO CLIENTS. (a) A state investment adviser registered or required to be registered under AS 45.55 shall furnish clients and prospective clients a written disclosure statement that complies with 17 C.F.R. 275.204-3.

(b) Upon or before completing each purchase or sale of a security or completing a debit or credit for securities, cash, and other items for account of others, an agent of an issuer registered or required to be registered under AS 45.55 shall notify a customer in writing of the

- (1) identity and price of the security;
- (2) account for which the transaction was entered;
- (3) date of execution;
- (4) name of the person handling the transaction; and
- (5) fact that the transaction was unsolicited, if it was. (Eff. 4/19/2000,

Register 154)

Authority: AS 45.55.030 AS 45.55.040 AS 45.55.050 AS 45.55.950

3 AAC 08.055. ADVERTISING ON THE INTERNET BY ISSUERS, BROKER-DEALERS, STATE INVESTMENT ADVISERS, BROKER-DEALER AGENTS, AND INVESTMENT ADVISER REPRESENTATIVES.

(a) An issuer broker-dealer, state investment adviser, federal covered adviser, agent, or an investment adviser representative registered or required to be registered in this state under AS 45.55 who distributes information on available products and services governed by AS 45.55 through communications made on the internet does not transact or conduct business in this state for purposes of AS 45.55.030(a), (c), or (e), regardless of whether those communications are directed generally to persons having access to the internet, transmitted through postings on electronic bulletin boards, or displayed on home pages, on websites, or by similar methods, if

(1) the internet communication contains a legend that clearly states that the issuer, broker-dealer, state investment adviser, federal covered adviser, agent, or an investment adviser representative registered or required to be registered in this state under AS 45.55

(A) may transact business governed by AS 45.55 in this state only upon registration or a notice filing as required under AS 45.55, unless excluded or exempted from registration or notice requirements; and

(B) may not make a follow-up, individualized response to a person in this state that involves effecting or attempting to effect a transaction in securities, or the rendering of personalized investment advisory services for compensation, unless the issuer, broker-dealer, state investment adviser, federal covered adviser, agent, or an investment adviser representative registered or required to be registered in this state under AS 45.55 complies with the registration or notice requirements of AS 45.55, or unless an applicable exemption or exclusion from those requirements applies;

(2) the internet communication contains a mechanism, including technical “firewalls” or other implemented policies and procedures, reasonably designed to ensure that before any subsequent, direct communication with prospective customers or clients in this state, the issuer, broker-dealer, state investment adviser, federal covered adviser, agent, or an investment adviser representative registered or required to be registered in this state under AS 45.55 complies with the registration or notice

requirements of AS 45.55, or qualifies for an exemption or exclusion from those requirements;

(3) the internet communication does not effect or attempt to effect a transaction in securities or the delivery of personalized investment advice for compensation in this state, and is limited to the dissemination of general information on products and services; and

(4) in the case of an agent or investment adviser representative,

(A) the association of the agent or the investment adviser representative with the issuer, broker-dealer, state investment adviser, or federal covered adviser is prominently disclosed within the internet communication;

(B) the issuer, broker-dealer, state investment adviser, or federal covered adviser with whom the agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of any internet communication by an agent or investment adviser representative;

(C) the issuer, broker-dealer, state investment adviser, or federal covered adviser with whom the agent or investment adviser representative is associated first authorizes the distribution of information on the particular products and services through the internet communication; and

(D) in disseminating information through the internet communication, the issuers, agent or investment adviser representative acts within the scope of the authority granted by the issuer, broker-dealer, state investment adviser, or federal covered adviser.

(b) This section does not relieve an issuer, [A] broker-dealer, state investment adviser, federal covered adviser, agent, or investment adviser representative from compliance with the applicable registration or notice requirements or antifraud or related provisions of AS 45.55.

(c) For purposes of this section, the internet includes the world wide web and similar proprietary or common carrier electronic systems. (Eff. 4/19/2000, Register 154; am 6/8/2001, Register 158)

Authority: AS 45.55.150

AS 45.55.950

3 AAC 08.062. FRAUDULENT PRACTICES OF ISSUERS AND PERSONS ACTING ON AN ISSUER'S BEHALF. The administrator will consider an issuer responsible under AS 45.55.010 for the fraudulent actions of a person acting on the issuer's behalf that violate AS 45.55.025, 45.55.027, or 45.55.028, regardless of whether the person acting on the issuer's behalf is registered or required to be registered under AS 45.55.030(a) or is excluded from the definition of "agent" under AS 45.55.990(5)(A). (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.010

AS 45.55.950

3 AAC 08.065. SALES OF SECURITIES AT FINANCIAL INSTITUTIONS. (a) This section applies exclusively to broker-dealer services conducted by broker-dealers on the premises of a financial institution where retail deposits are taken. This section does not apply to broker-dealer services provided to non-retail customers, such as institutional investors within the meaning of AS 45.55.990(3)(D)(i) – (iii).

(b) A broker-dealer may not conduct broker-dealer services on the premises of a financial institution where retail deposits are taken, unless the broker-dealer complies with the following requirements:

(1) if practical, broker-dealer services must be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken; the broker-dealer must identify its services in a manner that clearly distinguishes those services from the financial institution's deposit-taking activities; the broker-dealer's name must be clearly displayed in the area in which the broker-dealer conducts its services;

(2) networking and brokerage affiliate arrangements must be governed by a written agreement that sets out the responsibilities of the parties and the compensation arrangements; that agreement must provide that supervisory personnel of the broker-dealer and representatives of the administrator are to be permitted access to the financial institution's premises where the broker-dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to broker-dealer services; the broker-dealer must ensure that the agreement clearly outlines the duties and responsibilities of each party;

(3) at or before the time that a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer must

(A) disclose, orally and in writing, that the securities products purchased or sold in a transaction with the broker-dealer are

(i) not insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF), as appropriate;

(ii) not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and

(iii) subject to investment risks, including possible loss of the principal invested; and

(B) make reasonable efforts to obtain from each customer during the account-opening process a written acknowledgment of the disclosures required by (A) of this paragraph;

(4) if broker-dealer services include any written or oral representations concerning insurance coverage, other than coverage through the FDIC or NCUSIF, clear and accurate written or oral explanations of the coverage must also be provided to the customers when those representations are first made;

(5) each of the broker-dealer's confirmations and account statements must indicate clearly that the broker-dealer services are provided by the broker-dealer;

(6) recommendations by a broker-dealer concerning non-deposit investment products with a name similar to that of the financial institution must occur under a sales program designed to minimize the risk of customer confusion;

(7) advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer, or that are distributed by the broker-dealer on the premises of a financial institution, must disclose that securities products are

(A) not insured by the FDIC or NCUSIF, as appropriate;

(B) not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and

(C) subject to investment risks, including possible loss of the principal invested;

(8) to comply with (7) of this subsection, a broker-dealer may use the following shorter, logo format disclosures in advertisements and sales literature, including material published, or designed for use, in a radio or television broadcast or on the screen of an automated teller machine, billboards, signs, posters, and brochures, if those disclosures are displayed in a conspicuous manner:

- (A) "Not FDIC Insured," or "Not NCUSIF Insured," as appropriate;
- (B) "No Bank Guarantee";
- (C) "May Lose Value";

(9) if the omission of the disclosures required by (7) of this subsection does not cause the advertisement or sales literature to be misleading in the context in which the material is presented, those disclosures are not required for messages contained in

- (A) radio broadcasts of 30 seconds or less;
- (B) electronic signs, including billboard-type signs that are electronic, time and temperature signs, and ticker tape signs; for purposes of this subparagraph, electronic signs do not include television, on-line computer services, or automated teller machines; and

- (C) signs, banners, and posters if used only as location indicators;

(10) the broker-dealer must promptly notify the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

(c) This section does not relieve a broker-dealer from compliance with AS 45.55, this chapter, or other applicable laws, rules, or regulations that govern the operations of broker-dealers and their agents, including supervisory obligations.

(d) In this section,

(1) "affiliate" means a company that controls, is controlled by, or is under common control with a broker-dealer as defined in NASD Rule 2720(b);

(2) "broker-dealer services" means the investment banking or securities business; for purposes of this paragraph, "investment banking or securities business" has the meaning given in paragraph (p) of Article I of the by-laws of the NASD, as incorporated by NASD Rule 121;

(3) "financial institution" means one of the following institutions, if located in this state:

(A) a federal, national, or state-chartered bank, savings and loan association, savings bank, or credit union; or

(B) a service corporation of an institution listed in (A) of this paragraph;

(4) "networking arrangement" and "brokerage affiliate arrangement" mean a contractual or other arrangement between a broker-dealer and a financial institution under which the broker-dealer conducts broker-dealer services on the premises of the financial institution where retail deposits are taken. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.025

AS 45.55.060

AS 45.55.950

ARTICLE 2. REGISTRATION AND NOTICE OF SECURITIES.

Section

- 80. Application to register securities
- 85. Notice filings for offerings of investment company securities, face-amount certificate companies, and unit investment trusts
- 87. Solicitations of interest before the filing of a registration statement
- 90. Application to register or notice securities on a continuing basis
- 100. Application to register mining securities
- 110. Application to register oil and gas securities
- 120. Prospectus
- 125. Unsound financial condition
- 130. Maximum commissions and expenses
- 135. Disclosure of use of proceeds
- 140. Offering price
- 150. Options and warrants
- 160. Cheap stock (promotional shares)
- 170. Promoters' equity investment
- 180. Escrow and lock-in of promotional shares
- 182. Release of escrowed promotional shares
- 184. Documentation of termination of escrow
- 186. Transfer of escrowed promotional shares
- 190. Impoundment of proceeds
- 200. Real estate investment trusts
- 210. Unequal voting rights of stock
- 215. Loans and other material affiliated transactions
- 220. Debentures
- 222. Suitability standards
- 225. Preferred stock
- 227. Participation in coordinated securities reviews
- 230. Effectiveness, post-registration, and post-notice requirements for securities

3 AAC 08.080. APPLICATION TO REGISTER SECURITIES. (a) An application to register securities for distribution in this state may be filed with the administrator in substantially the form and content required by the appropriate application form, together with the exhibits required for applications for registration by notification, coordination, or qualification, as the case may be. The uniform NASAA Form U-1, or its successor, filed with the SEC, will also be accepted for offerings. Forms will be supplied upon request, at a nominal cost.

(b) A copy of the proposed prospectus may be filed as a part of the application for registration in lieu of furnishing the information in item-and-answer form. If this procedure is followed, the text of the items of the form must be omitted from the registration statement, as well as from the prospectus.

(c) If any items of a form call for information not required to be included in the prospectus, the text of those items together with the answers to the items must be filed with the prospectus under cover of the facing sheet as a part of the application for registration. If any of those items is inapplicable, or the answer to any of those items is in the negative, a statement to that effect must be made. Any financial statements not required to be included in the prospectus but required for registration must be filed as a part of the application for registration, unless incorporated by reference.

(d) An application for registration must include a table of contents or a cross-reference sheet showing the location in the prospectus of the required information in response to the items of the form. If any item is inapplicable, or the answer to the item is in the negative and is omitted from the prospectus, a statement to that effect must be made.

(e) A person filing an application to register securities under AS 45.55 must at the time of filing the application pay a fee as provided in 3 AAC 08.920(a)(5). (Eff. 2/20/72, Register 41; am 9/8/91, Register 119; am 4/19/2000, Register 154)

Authority: AS 45.55.070 AS 45.55.110 AS 45.55.100 AS 45.55.950

3 AAC 08.085. NOTICE FILINGS FOR OFFERINGS OF INVESTMENT COMPANY SECURITIES, FACE-AMOUNT CERTIFICATE COMPANIES, AND UNIT INVESTMENT TRUSTS.

(a) Except as provided in (b) of this section, an investment company, face-amount certificate company, or unit investment trust that is registered under 15 U.S.C. 80a-1 – 80a-64 (Investment Company Act of 1940) or that has currently filed a registration statement under 15 U.S.C. 77a - 77b (Securities Act of 1933) is not required to file with the administrator, either before or after the initial offer in this state of a federal covered security of the type described in 15 U.S.C. 77r(b)(2) (sec.18(b)(2) of the Securities Act of 1933), a copy of any document that is part of a federal registration statement filed with the SEC or is part of an amendment to that federal registration statement.

(b) An investment company, face-amount certificate company, or unit investment trust that is registered under 15 U.S.C. 80a-1 – 80a-64 (Investment Company Act of 1940) or that has filed a registration statement under 15 U.S.C. 77a - 77b (Securities Act of 1933) shall file upon written request of the administrator, and within the time period set forth in the request, a copy of any document, identified in the request, that is part of the federal registration statement filed with the SEC or part of an amendment to that federal registration statement.

(c) Before offering or selling a federal covered security of the type described in 15 U.S.C. 77r(b)(2) (sec.18(b)(2) of the Securities Act of 1933), the issuer shall file with the administrator, for each individual fund for which notice is being made,

(1) a NASAA Form NF, or its successor, or the first page of a NASAA Form U-1, or its successor, or any other form as the administrator prescribes that is part of the filing with the SEC or a uniform filing form;

(2) a consent to service of process, or NASAA Form U-2; and

(3) the fee required by 3 AAC 08.920(a)(4).

(d) A notice filing under this section is effective

(1) only if the administrator receives each item required by (c) of this section; and

(2) on the date that the administrator receives the last of the items required by (c) of this section.

(e) A notice filing under this section is valid for one year from the effective date established under (d) of this section, or for two years from that date if, when submitting the items required by (c) of this section, the issuer paid the fee required by 3 AAC 08.920(a)(4) for an automatic extension. To renew a notice, the issuer must submit the items required by (c) of this section, as if the issuer were making an initial filing. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.075

AS 45.55.110

AS 45.55.950

3 AAC 08.087. SOLICITATIONS OF INTEREST BEFORE THE FILING OF A REGISTRATION STATEMENT. (a) An issuer or an agent of the issuer may make an offer, but not a sale, of a security for the sole purpose of soliciting an indication of interest in receiving a prospectus, if

(1) the issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada;

(2) the issuer is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries;

(3) the issuer is not soliciting for a blind pool offering or other offering for which the specific business in which the issuer is or proposes to be engaged or the properties to be acquired cannot be described at the time of the solicitation;

(4) the offeror intends to register the security in this state under AS 45.55 and to conduct its offering under either 17 C.F.R. 230.251 – 230.263 (Regulation A) or 17 C.F.R. 230.501 – 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D);

(5) only a person who is registered under AS 45.55.030(a) as a broker-dealer or an agent, or who is exempted from registration makes a sale of the security; and

(6) the offeror does not know, and in the exercise of reasonable care could not know, that the issuer or any of the issuer's agents or promoters

(A) has filed a registration statement that is the subject of a currently effective registration stop order entered under a federal or state securities law within five years before the filing of the solicitation of interest form required by (c) of this section;

(B) within five years before the filing of the solicitation of interest form required by (c) of this section, was convicted of a

(i) felony or misdemeanor in connection with the offer, purchase, or sale of a security; or

(ii) felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretense, larceny, or conspiracy to defraud;

(C) is currently subject to a federal or state administrative enforcement order or judgment entered within five years before the filing of the solicitation of interest form required by (c) of this section, and

(i) entered by a state securities administrator or the SEC; or

(ii) in which fraud or deceit was found in connection with the purchase or sale of a security; for purposes of this subparagraph, fraud and deceit include making untrue statements of material facts and omitting material facts;

(D) is subject to a federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of an exemption from registration in connection with the offer, purchase, or sale of securities;

(E) is currently subject to a order, judgment, or decree entered by a court of competent jurisdiction within five years before the filing of the solicitation of interest form required by (c) of this section, and

(i) temporarily, preliminarily, or permanently restraining or enjoining the agent or promoter from engaging in or continuing a conduct or practice involving fraud or deceit in connection with the purchase or sale of a security; or

(ii) involving the making of a false filing under applicable securities laws and regulations with this state, another state, or the SEC; or

(F) is currently subject to an administrative enforcement order or judgment entered by a self-regulatory organization within five years before the filing of the solicitation of interest form required by (c) of this section, and finding fraud or deceit; for purposes of this subparagraph, fraud and deceit include making untrue statements of material facts and omitting to state material facts.

(b) The requirement in (a)(6) of this section does not apply if

(1) a person subject to a disqualification in (a)(6)(A)-(F) of this section is

(A) licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person, and if that person acts only in a capacity for which the person is licensed or registered; or

(B) the employee of a broker-dealer, the broker-dealer is registered in this state, and the SEC Form BD filed with this state as required by 3 AAC 08.011 or 3 AAC 08.014 discloses the order, conviction, judgment, or decree relating to that employee; or

(2) notwithstanding the existence of a disqualification listed in (a)(6)(A)-(F) of this section, the agency that created the basis for disqualification determines upon a showing of good cause that, within the agency's jurisdiction, denial of the solicitation of interest registration is not necessary.

(c) At least 10 business days before an initial solicitation of interest under this section, the offeror must submit to the administrator

(1) a solicitation of interest form (State of Alaska Form 08-113);

(2) any materials to be used to conduct solicitations of interest, including the script of any broadcast to be made and a copy of any notice to be published; and

(3) the fee required by 3 AAC 08.920(a)(9).

(d) At least five business days before using materials submitted under (c) of this section, an offeror must submit to the administrator any amendments to those materials or any additional materials to be used to conduct solicitations of interest. However, materials provided to a particular offeree upon a request by that offeree need not be submitted to the administrator until five business days after usage.

(e) Except for scripted broadcasts and published notices, and except to the extent necessary to obtain information needed to submit a solicitation of interest form required under (c) of this section, an offeror may not communicate with an offeree about the contemplated offering unless the offeree is provided with a copy of the most current

solicitation of interest form at or before the time of the communication or within five calendar days after the communication.

(f) During the solicitation of interest period, an offeror may not solicit or accept money or a commitment to purchase securities.

(g) An offeror may not make a sale of the security until seven calendar days after delivery to the purchaser of a final prospectus that is part of a registration statement that is effective under AS 45.55.090 or 45.55.100.

(h) Failure of an offeror to comply with the requirements of this section is a violation of AS 45.55, and the administrator will, in the administrator's discretion, take action under AS 45.55.920 or deny registration under AS 45.55.

(i) Except as provided in (j) of this section, any published notice, script for broadcast, or printed material delivered apart from a copy of the most current solicitation of interest form submitted under (c) of this section must contain the identity of the chief executive officer of the issuer, a brief and general description of the issuer's business and products, and the following legends:

"THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED. NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL THE DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE COMPANY AND THE OFFERING.

AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND. THIS OFFER IS BEING MADE UNDER THE REQUIREMENTS OF FEDERAL AND STATE SECURITIES LAWS. NEITHER THE FEDERAL NOR THE STATE AUTHORITIES HAVE CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT OR ANY OTHER DOCUMENT PRESENTED TO YOU IN CONNECTION WITH THIS OFFER. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE US SECURITIES AND EXCHANGE COMMISSION AND THE SECURITIES ARE REGISTERED IN ALASKA.

REGISTRATION OF THE SECURITIES FOR SALE IN ALASKA IS DEPENDENT ON COMPLIANCE WITH THE ALASKA SECURITIES ACT (AS 45.55). THEREFORE, THERE CAN BE NO ASSURANCE THAT THE SECURITIES WILL BE REGISTERED FOR SALE IN ALASKA."

(j) The requirements of (i) of this section do not apply to the delivery of printed material to a person who has already received a copy of the most current solicitation of interest form as required by (e) of this section, with the legends required by (i) of this section included on the form.

(k) All communications with an offeree made in reliance on this section must cease after a registration statement is filed in this state. A sale may not be made until at least 20 calendar days after the last communication made in reliance on this section.

(l) Except for the requirements at (a)(5) of this section, the administrator will, in the administrator's discretion, waive any requirement of this section in writing, upon application by the offeror for cause shown. Neither compliance nor attempted compliance with this section, nor the absence of an objection or order by the administrator with respect to an offer of securities undertaken under this section, is a

waiver of any condition of this section or a confirmation by the administrator of the availability of this section.

(m) An offer made in reliance on this section is not a violation of AS 45.55.070 by virtue of being integrated with a subsequent offer or sale of securities unless that subsequent offer or sale would be integrated under federal securities laws.

(n) An issuer on whose behalf an indication of interest is solicited under this section may not make an offer or sale in reliance on AS 45.55.900(b)(5)(A)–(C) until six months after the last communication with a prospective investor is made under this section.

(o) The administrator will, in the administrator's discretion, review the materials filed under this section to determine whether those materials are fraudulent or misleading. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

(p) An offeror may begin to conduct solicitations of interest under this section if the requirements of this section have been satisfied, unless notified otherwise by the administrator. The administrator will, in the administrator's discretion, at any time notify the offeror not to distribute a solicitation of interest form submitted under (c) of this section, script, advertisement or other material that the administrator considers to be in violation of AS 45.55.010. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.070 AS 45.55.100 AS 45.55.110 AS 45.55.950

3 AAC 08.090. APPLICATION TO REGISTER OR NOTICE SECURITIES ON A CONTINUING BASIS. (a) An application for registration of a security to be issued on a continuing or recurring basis must be made by means of a separate application for each individual security.

(b) A notice filing for a face-amount certificate company, an open-end management company issuing a redeemable security, or a unit investment trust issuing a redeemable security must be made by a separate notice filing for each individual fund. (Eff. 2/20/72, Register 41; am 2/23/83, Register 85; am 4/19/2000, Register 154)

Authority: AS 45.55.075 AS 45.55.080 AS 45.55.090 AS 45.55.100
AS 45.55.110 AS 45.55.950

3 AAC 08.100. APPLICATION TO REGISTER MINING SECURITIES. (a) For the registration of mining securities, an applicant shall give the location and means of access to the mining properties now held or intended to be acquired and the nature of the title under which those properties are held or intended to be held. The applicant shall indicate any known risks to which that title may be subject, and include

(1) a survey certificate, or a photostatic copy of that certificate, prepared and signed by a qualified mining engineer or registered land surveyor showing the location of unpatented claims, with at least transit stadia accuracy;

(2) a report of a qualified mining engineer or professional geologist setting forth at least the following:

(A) a description of each property, including its geographical features, mineralization, occurrence and disposition of ore or mineral bodies, and other conditions of which an investor should reasonably be informed;

(B) the identification of principal metallic or other constituents of the deposits to be explored or developed; the report must describe the

characteristics of those deposits; unless a body of ore has been sufficiently tested to be properly classified as proven or probable ore, the report

(i) may not make a claim as to the existence of a body of ore; and

(ii) must state that a body of commercial ore is not known to exist on the property;

(C) the names of the locators of each unpatented claim, with a statement that each claim has been properly located in accordance with applicable laws and regulations, that surface boundaries have been properly marked, that all monuments or markers are in place, that location notices have been recorded in the recorder's office of the district court in which the claims are situated, and that all assessment work as required by law has been done;

(D) a surface map of the properties included in the report showing their relative location to the general area and the means of access to those properties;

(3) a title opinion of an attorney relating to each claim or group;

(4) a copy of the deed and any lease, option, contract to purchase, or assignment relative to those claims, with a statement signed by lessor or vendor that the instrument is presently in good standing and that no forfeiture or default has occurred;

(5) a copy of any contract for engineering services, core drilling, development work, and similar services; and

(6) a report of the technical training and experience in mining of each of the officers, directors, and promoters of the person for whom the application is made.

(b) An SEC Form S-3 (Registration Statement) filed with the SEC will be acceptable application for this section.

(c) For purposes of this section, a body of ore is

(1) proven ore if it is so extensively sampled that the risk of failure in continuity of the ore in that body is reduced to a minimum; and

(2) probable ore if the risk of failure in continuity is greater than for proven ore as described in (1) of this section but sufficient justification exists to assume continuity of the ore. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.100 AS 45.55.950

3 AAC 08.110. APPLICATION TO REGISTER OIL AND GAS SECURITIES.

An application to register an interest or participation in an oil or gas lease must contain the following:

(1) a description of the properties involved and copies of all conveyances, assignments, leases, subleases, or other agreements relating to those properties together with an opinion of counsel or title policy indicating that applicant has title to those properties;

(2) a statement of the area of interest to the applicant, a description of the plan of exploration including, if available, anticipated drilling depth, each horizon in which hydrocarbon substances are expected and the nature of those hydrocarbons, the estimated costs of drilling and completing each well proposed to be drilled, and the availability of a market for hydrocarbons discovered;

(3) in the case of drilling programs other than programs for wildcat drilling, a geological report and appraisal, that are prepared by a registered engineer or a professional geologist, and that indicate the proposed method of development and production, a statement of the method used in preparing that report, together with supporting geological and engineering data, a table setting forth the estimated future production and the present value of that production, together with a statement of each factor used in making that estimate, and an estimate of expenses to be incurred in connection with development and production of minerals as proposed in that geological report;

(4) a statement in tabular form, for all productive properties, of

(A) net production of oil and gas to the issuer's interest from each of the properties by years for the past four years before the latest year, and by months for the latest year; and

(B) the number of net producing wells owned by the issuer that contributed to the production during each of the time periods specified in (A) of this paragraph. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.100 AS 45.55.950

3 AAC 08.120. PROSPECTUS. (a) An issuer applying to register a sale of securities shall prepare a prospectus disclosing all material facts affecting the sale of the securities. The prospectus must be designated as an exhibit to and is a part of the application for registration. A prospectus meeting the requirements of 15 U.S.C. 77a – 77b (Securities Act of 1933) satisfies the requirements of this subsection.

(b) A person who knowingly uses a prospectus that contains a false or misleading statement, or omits a material fact necessary for an accurate and complete presentation of matters affecting the securities being offered violates AS 45.55.

(c) A copy of the prospectus must be delivered to each prospective purchaser of securities before consummation of any sale or contract for sale.

(d) An issuer shall file an amended prospectus

(1) at the end of each 13-month period from the effectiveness of the registration, for a registration by notification or qualification;

(2) at the end of each 16-month period from the effectiveness of the registration, for a registration by coordination; and

(3) in the event of any material change relating to the issuer or the offering.

(e) An amended prospectus filed under (d) of this section must include each material change and an up-to-date presentation of the issuer's condition and circumstances, including financial statements. Amendments must be filed in the form required by 3 AAC 08.230(i)-(k). Additional solicitations or sales may not be made until the amended or revised prospectus has been prepared and copies have been filed with the administrator. The prospectus must include its expiration date. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.100 AS 45.55.950

3 AAC 08.125. UNSOUND FINANCIAL CONDITION. (a) The administrator will consider an issuer to be in unsound financial condition if

(1) the issuer's financial statements contain a footnote to those statements or an explanatory paragraph in the independent auditor's report regarding the issuer's ability to continue as a going concern; and

(2) one or more of the following is identified from the financial statements described in (1) of this subsection or, if the application for registration contains audited financial statements that were issued more than 90 days before the date of the application, from accompanying interim unaudited financial statements:

- (A) an accumulated deficit;
- (B) negative shareholder equity;
- (C) an inability to satisfy current obligations as they come due;
- (D) negative cash flow; for purposes of this subparagraph, an issuer has negative cash flow if revenues are not being generated by operations in excess of cash outflow;

(E) other indicators of financial difficulties.

(b) The administrator will, in the administrator's discretion, deny an application for registration by an issuer in unsound financial condition.

(c) The administrator will, in the administrator's discretion, register an application for registration by an issuer in unsound financial condition if the chief financial officer of the issuer provides pro forma financial data acceptable to the administrator that

(1) demonstrate that the issuer's financial condition will improve either as a direct result of the offering proceeds, or through the use of the offering proceeds as part of a long term business plan;

(2) demonstrate when profitability is expected to occur; and

(3) are supported with documentation of and the bases for any assumptions.

(d) An issuer registered under the provisions of (c) of this section must disclose in its prospectus

(1) that the issuer is considered to be in unsound financial condition, and that persons should not invest unless they can afford to lose their entire investment; and

(2) any of the following risk factors, if applicable:

(A) the presence of an explanatory paragraph in the independent auditor's report;

(B) the means by which the issuer has been financing its operations, if the issuer has not been generating revenues from operations;

(C) the amount of any accumulated deficit;

(D) the presence and amount of any negative shareholder equity;

(E) the need for future financing.

(e) The administrator will, in the administrator's discretion, require an issuer registered under (c) of this section to apply the net worth standards set out in (1)-(2) of this subsection or limit the sales of securities to accredited investors. The imposition of minimal net worth standards under this subsection does not relieve a broker-dealer of the responsibility of making an independent determination of suitability required under industry standards. Unless the administrator determines that the risks associated with the offering require different standards, the issuer may sell securities only to accredited investors or to investors that have the following:

(1) a minimum annual gross income of \$65,000 and a minimum net worth of \$65,000, exclusive of the investor's principal automobile, principal residence, and home furnishings; or

(2) a minimum net worth of \$150,000, exclusive of the investor's principal automobile, principal residence, and home furnishings.

(f) If the issuer's latest audited financial statements contain an auditor's report or footnote that contains an opinion or statement regarding the ability of the issuer to continue as a going concern, the administrator will, in the administrator's discretion, require that all promotional shares be deposited in escrow in accordance with 3 AAC 08.180 – 3 AAC 08.186. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.120 AS 45.55.950

3 AAC 08.130. MAXIMUM COMMISSIONS AND EXPENSES. (a) The administrator will, in the administrator's discretion, disallow an offer or sale of securities if the underwriting expenses to be incurred exceed 17 percent of the gross proceeds from the public offering.

(b) Underwriting expenses consist of

(1) commissions to underwriters or broker-dealers;

(2) non-accountable fees or expenses to be paid to the underwriter or broker-dealer;

(3) underwriter's warrants and options; underwriter's warrants and options must be valued as follows:

(A) the warrant value is calculated using the following formula:

warrant value = $\{[165 \% \times (\text{aggregate offering price})] - [(\text{exercise price}) \times (\text{number of shares offered to the public})] \div 2\} \times [(\text{number of shares underlying the warrant}) \div (\text{number of shares offered to the public})]$

(B) the value calculated under (A) of this paragraph is reduced by 20 percent if the exercise period of the warrants is extended from one year after the public offering to two years after the public offering and by 40 percent if the exercise period of the warrants is extended from one year after the public offering to three years after the public offering; a reduction under this subparagraph applies if the warrants granted to underwriters are subject to the following restrictions:

(i) the underwriter must be a managing underwriter;

(ii) the public offering must be either a firmly underwritten offering or a "minimum-maximum" offering, and options or warrants may be issued in a "minimum-maximum" public offering only if the options or warrants are issued on a pro rata basis and the minimum amount of securities has been sold;

(iii) the exercise price of the warrants must be at least equal to the public offering price;

(iv) the number of shares covered by underwriter's options or warrants may not exceed 10 percent of the shares of common stock actually sold in the public offering;

(v) the life of the options or warrants may not exceed a period of five years from the completion date of the public offering;

(vi) the options or warrants may not be exercisable for the first year after the completion date of the public offering;

(vii) options or warrants may not be transferable, except to partners of the underwriter, if the underwriter is a partnership, to officers and employees of the underwriter who are also shareholders of the underwriter, if the underwriter is a corporation, by will, under the laws of descent and distribution, or by the operation of law;

(viii) the warrant agreement may not allow for a reduction in the exercise price of the options or warrants resulting from a subsequent issuance of shares by the issuer except if that issuance is under a stock dividend or stock split, merger, consolidation, reclassification, reorganization, recapitalization, or sale of assets;

(C) in this paragraph, "aggregate offering price" means the sum of all cash and other consideration to be received for issuance of the securities;

(4) rights of first refusal, rights of first refusal must be valued at

(A) one percent of the public offering; or

(B) the amount payable to the underwriter if the issuer terminates the right of first refusal;

(5) solicitation fees payable to the underwriter; solicitation fees must be valued at the lesser of

(A) actual cost; or

(B) one percent of the public offering, if the fees are payable within one year of the offering;

(6) financial consulting or financial advisory agreements with an underwriter or any other similar type of agreement or fee, however designated; those agreements must be valued at actual cost;

(7) expenses that the underwriter incurs to meet due diligence obligations;

(8) payments either made within six months before or required to be made within six months after the public offering to investor relations firms designated by the underwriter; and

(9) other underwriting expenses incurred in connection with the public offering of securities as determined by the administrator.

(c) Underwriting expenses do not include financial consulting or financial advisory agreements with the underwriter payable at the time the services are rendered, if those agreements were entered into at least twelve months before the registration is filed with the SEC.

(d) The administrator will, in the administrator's discretion, disallow an offer or sale of securities if the direct and indirect selling expenses of the offering exceed 20 percent of the gross proceeds from the public offering.

(e) Selling expenses consist of

(1) commissions to underwriters or broker-dealers;

(2) non-accountable fees or expenses to be paid to the underwriters or broker-dealers;

(3) auditors' and accountants' fees;

(4) legal fees;

(5) the cost of printing prospectuses, circulars, and other documents required to comply with securities laws and regulations;

(6) charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, engineers, appraisers, and other experts;

(7) the cost of authorizing and preparing the securities, including issue taxes and stamps;

(8) financial consulting or financial advisory agreements with an underwriter or any similar type agreement or fee, however designated; those agreements

(A) must be valued at actual cost; and

(B) do not include a financial or consulting agreement that is entered into at least twelve months before the registration is filed with the SEC;

(9) payments either made within six months before or required to be made within six months after the public offering to an investor relations firm designated by the underwriter;

(10) expenses incurred in connection with bridge financing in the twelve month period preceding a public offering of securities; those expenses include

(A) direct expenses attributable to the financing including interest charges and those expenses set forth in this subsection and (b) of this section;

(B) warrants and options valued in accordance with (b)(3) of this section; and

(C) expenses attributable to the issuance of securities that are not options, warrants, or convertible securities; those expenses must be valued using the following formula:

$$\{[(\text{public offering price per share}) - (\text{cost per share})] \times [(\text{number of securities issued}) \times 100]\} \div (\text{aggregate public offering proceeds});$$
and

(11) other cash expenses incurred in connection with the public offering of securities as determined by the administrator.

(f) The administrator will, in the administrator's discretion, disallow a public offering or sale of securities, that includes selling security holders offering more than 10 percent of the securities to be sold in the public offering, unless selling security holders offering

(1) or selling more than 10 percent but less than 50 percent of the securities to be sold in the public offering pay a pro rata share of all selling expenses of the public offering, excluding the legal and accounting expenses of the public offering, and the prospectus or offering document discloses the amount of selling expenses that the selling security holders will pay; or

(2) more than 50 percent of the securities to be sold in the offering pay a pro rata share of all selling expenses of the public offering, and the prospectus or offering document discloses the amount of selling expenses that the selling security holders will pay.

(g) The provisions of (f) of this section do not apply if the selling security holders have a written agreement with the issuer, that was entered into in an arm's-length transaction, under which the issuer has agreed to pay all of the selling security holders' selling expenses. In the agreement, the issuer need not agree to pay an underwriter's or broker-dealer's compensation. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.120

AS 45.55.950

3 AAC 08.135. DISCLOSURE OF USE OF PROCEEDS. (a) The administrator will, in the administrator's discretion, deny registration unless it complies with the requirements of this section.

(b) An issuer's prospectus must disclose, in a tabular form, for both the minimum and maximum amounts proposed, if applicable, the following information:

(1) the estimated cash proceeds that the issuer is to receive from the offering;

(2) the purposes for which the issuer is to use the proceeds disclosed under (1) of this subsection;

(3) the amount, expressed as a percentage and as a dollar amount, to be used for each purpose identified under (2) of this subsection;

(4) the order or priority in which the proceeds disclosed under (1) of this subsection will be used for the purposes identified in (2) of this subsection.

(c) In addition to the information required under (b) of this section, an issuer's prospectus must disclose the following:

(1) the amounts of any money to be raised from other sources to achieve the purposes identified under (b)(2) of this section, the sources of that money, whether the sources are firm or contingent, and any contingencies;

(2) if any part of the proceeds is to be used to acquire property, including goodwill, other than in the ordinary course of business, the following information:

(A) the name and address of each person selling the property;

(B) the purchase price of the property;

(C) the name of any person who has received a commission in connection with the acquisition of the property, and the amount of that commission;

(D) any other expense in connection with the acquisition of the property, including the cost of borrowing money to finance the acquisition;

(3) if any part of the proceeds is to be used to acquire property in the future, the acquisition criteria to be used by the issuer to determine whether or not to acquire that property; and

(4) the amount of any proceeds used to pay indebtedness, including unpaid salaries, to promoters, and the reasons for using those proceeds for that purpose.

(d) The issuer may not reserve more than 15 percent of the proceeds for working capital or general corporate purposes, or for any other unspecified use, unless the issuer's prospectus

(1) discloses each potential use of unspecified proceeds with qualifying language that the potential use may be subject to change; and

(2) indicates the specific circumstances leading to reallocation and the potential areas of reallocation.

(e) The issuer must demonstrate to the administrator's satisfaction that the offering proceeds, together with all other sources of financing currently available to the issuer, are sufficient to sustain the issuer's proposed activities. If the offering proceeds are insufficient to sustain the issuer's activities for at least 12 months following the offering, the issuer must provide the appropriate risk disclosure of that fact in the prospectus.

(f) If an offering is not a firmly underwritten offering, the issuer must set a minimum amount of proceeds to be raised consistent with the business plan set out in

the prospectus. The proceeds of the offering must be impounded, in accordance with 3 AAC 08.190, in an interest-bearing escrow or trust account until the minimum amount is reached. The prospectus must disclose if officers, directors, or other promoters have the right to purchase shares for the purpose of meeting the impound requirements. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.120

AS 45.55.950

3 AAC 08.140. OFFERING PRICE. (a) In applications for the registration of securities by qualification or coordination the offering price of the issue sought to be registered must bear a reasonable relationship to the established public market price if an established price exists. The issuer must submit information justifying the adequacy of that public market, including the public market price, the number of shares owned by public shareholders, the names and locations of the dealers regularly making a market in the shares, and the newspapers and financial publications where the shares are regularly quoted. If the price/earnings multiple of the issuer has changed significantly during that period, information must be submitted accounting for that change.

(b) In applications for the registration of securities if a public market price has not been established, the offering price of the securities sought to be registered must bear a reasonable relationship to one or more of the following:

(1) an amount per share not to exceed 25 times the net earnings per share for the last two complete fiscal years of the issuer before the proposed offering date; the administrator will, in the administrator's discretion, approve a higher price/earnings ratio or a different period of operation for measuring the price/earnings ratio if increased future earnings are clearly established;

(2) book value;

(3) the current market prices of the shares of companies closely similar and comparable to the issuer in terms of size, industry, products, and other factors relevant to the setting of those prices; an applicant who submits information to demonstrate a reasonable relationship between those prices and the proposed offering price must also demonstrate that the price/earnings ratio for each comparable company is below the limit set in (1) of this subsection or is justified by clearly established increased future earnings.

(c) The administrator will, in the administrator's discretion, accept an underwriter's pricing memorandum prepared in connection with the proposed offering and submitted to satisfy the requirements of this section for submission of information. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.120

AS 45.55.950

3 AAC 08.150. OPTIONS AND WARRANTS. (a) An issuer may issue options or warrants to underwriters as compensation with a public offering if the options or warrants comply with the requirements of 3 AAC 08.130.

(b) An issuer may grant options or warrants to unaffiliated institutional investors in connection with loans if

(1) the options or warrants are issued contemporaneously with the issuance of the loan;

(2) the options or warrants are granted as the result of bona fide negotiations between the issuer and unaffiliated institutional investor;

(3) the exercise price of the options or warrants is not less than the fair

market value of the issuer's shares of common stock underlying the options or warrants on the date that the loan was approved; and

(4) the number of shares issuable upon exercise of the options or warrants multiplied by the exercise price of the options or warrants does not exceed the face amount of the loan.

(c) An issuer may grant options or warrants in connection with acquisitions, reorganizations, consolidations, or mergers if the

(1) options or warrants are granted to persons who are unaffiliated with the issuer; and

(2) earnings of the issuer at the time of the grant and after giving effect to the acquisition, reorganization, consolidation, or merger would not be materially diluted by the exercise of the options or warrants.

(d) An issuer may not grant options and warrants at an exercise price of less than 85 percent of the fair market value of the issuer's underlying shares of common stock on the date of the grant. If the administrator and the issuer dispute the fair market value of the stock, the administrator will consider whether the issuer and its officers and directors have obtained a concurrent appraisal, by a qualified independent appraiser, of the value of the shares of common stock at the time of the grant as evidence of the fair market value.

(e) The total number of options and warrants issued or reserved for issuance at the date of the public offering may not, for one year following the effective date of the registration, exceed 15 percent of the issuer's shares of common stock outstanding at the date of the public offering plus the number of shares of common stock being offered that are firmly underwritten, or in the case of offerings not firmly underwritten, the number of shares of common stock required to be sold in order to meet the minimum offering amount. In calculating the number of options and warrants, the following are excluded:

(1) options and warrants that were issued or reserved for issuance under (a), (b), or (c) of this section;

(2) options and warrants that were issued or reserved for issuance to employees or consultants who are not promoters, in connection with an incentive stock option plan qualified under 26 U.S.C. 422 (Internal Revenue Code); and

(3) options and warrants that are exercisable at or above the public offering price.

(f) An option or warrant issued and outstanding at the date of the public offering, except for an option or warrant issued under an incentive stock option plan qualified under 26 U.S.C. 422 (Internal Revenue Code), may not be exercisable more than five years from the date of the public offering.

(g) If the number of options and warrants that are issued and outstanding or that are reserved for issuance is material, the final offering circular must disclose the potential dilutive effects of those options and warrants.

(h) If the number of options and warrants issued exceeds the 15 percent limit established in (e) of this section, the administrator will, in the administrator's discretion, require the cancellation of the excess options or, in the alternative, subject the excess options to an escrow or lock-in agreement consistent with 3 AAC 08.180 – 3 AAC 08.186. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.120 AS 45.55.950

3 AAC 08.160. CHEAP STOCK (PROMOTIONAL SHARES). (a) The administrator will presume securities to be cheap stock if they are sold or issued within two years before the public offering date to promoters, finders, underwriters, or controlling persons for a consideration lower than the proposed public offering price of those securities, including options and warrants exercised, in the absence of any

(1) public market for those securities; or

(2) substantial change in the earnings or financial position of the issuer.

(b) In applications for the registration of securities by qualification or coordination, in which cheap stock has been previously issued or is to be issued, the following conditions must be met in order to avoid a requirement to escrow or lock-in promotional shares under 3 AAC 08.180 – 3 AAC 08.186:

(1) the issuance of the cheap stock must be fully justified;

(2) only a promotional or development stage company may issue cheap stock;

(3) the number of shares of cheap stock issued may not exceed 25 percent of the securities to be outstanding at the completion of the proposed public offering;

(4) the consideration paid for the shares of cheap stock must be at least 50 percent of the proposed public offering price.

(c) If the shares of cheap stock were or are to be acquired by the underwriters, the difference between the consideration for the shares and the proposed public offering price, when added to the other discounts, commissions, and fees in connection with the offering may not exceed the limitation imposed by 3 AAC 08.130(a).

(d) The provisions of (a) of this section apply to cheap stock acquired from selling shareholders unless those shareholders are so lacking in control of the issuer as to require different treatment.

(e) This section applies to applications for registration of equity securities or securities convertible into equity securities. For securities that are convertible into equity securities, the administrator will consider the conversion price to be the public offering price.

(f) The administrator will, in the administrator's discretion, require that cheap stock be, in accordance with 3 AAC 08.180 – 3 AAC 08.186,

(1) deposited, in whole or in part, in escrow; or

(2) subject to a lock-in agreement.

(g) The administrator will, in the administrator's discretion, waive a provision of (a) or (b) of this section for a registration application being reviewed under a multi-jurisdictional review procedure. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.120 AS 45.55.950

3 AAC 08.170. PROMOTERS' EQUITY INVESTMENT. (a) Except as described in (c) of this section, the administrator will, in the administrator's discretion, disallow a public securities offering by a promotional or development stage company if, for an aggregate public offering

(1) of \$1,000,000 or less, the promoters' equity investment is less than 10 percent of that amount;

(2) greater than \$1,000,000 and no more than \$1,500,000, the promoters' equity investment is less than the sum of \$100,000 and seven percent of the amount by which the offering exceeds \$1,000,000;

(3) greater than \$1,500,000 and no more than \$2,000,000, the promoters' equity investment is less than the sum of \$135,000 and five percent of the amount by which the offering exceeds \$1,500,000; and

(4) greater than \$2,000,000, the promoters' equity investment is less than the sum of \$160,000 and two and one-half percent of the amount by which the offering exceeds \$2,000,000.

(b) For purposes of this section, the promoters' equity investment consists of the total of cash, property, other tangible assets, and intangible assets that the promoters contribute to the issuer, if the administrator accepts the value of the property, other tangible assets, and intangible assets. The promoters' equity investment may be adjusted by the issuer's earned surplus immediately before the public offering.

(c) If the promoters' equity investment consists of tangible assets of one-half of the amount required by (a) of this section, the administrator will consider the promoters' equity investment to be acceptable if all promotional shares are deposited in escrow in accordance with 3 AAC 08.180 – 3 AAC 08.186. (Eff. 2/20/72, Register 41; am 2/9/78, Register 65; am 4/19/2000, Register 154)

Authority: AS 45.55.120

AS 45.55.950

3 AAC 08.180. ESCROW AND LOCK-IN OF PROMOTIONAL SHARES. (a)

The administrator will, in the administrator's discretion, require that a promoter deposit some or all of the promoter's promotional shares into an escrow account with an escrow agent, according to the terms of an escrow agreement, as a condition to registering a public offering of equity securities. The administrator will, in the administrator's discretion, require a lock-in agreement on substantially the same terms and conditions as an escrow agreement.

(b) Unless a promoter must comply with (d) of this section,

(1) the following formula determines the number of promotional shares to be deposited in escrow:

number of promotional shares to be escrowed = (number of shares held by promoters) – [(total amount paid by promoters for all shares held by promoters) ÷ (public offering price per share x .85)]; and

(2) if the result from the formula in (1) of this subsection is not a whole number, that result must be rounded to the nearest whole number.

(c) If the total paid by the promoter described in (b) of this section is paid in something other than cash, then the value attributed to that consideration must be acceptable to the administrator.

(d) The administrator will, in the administrator's discretion, require that all promotional shares be deposited in escrow if the issuer's latest audited financial statements contain an auditor's report or footnote that contains an opinion or statement regarding the ability of the issuer to continue as a going concern.

(e) The administrator will, in the administrator's discretion, require each promoter to deposit promotional shares into escrow on a pro rata basis.

(f) Except as provided in 3 AAC 08.182, a depositor shall have the same voting rights as a shareholder who purchases equity securities under the public offering.

(g) If, while promotional shares are held in escrow, a depositor receives or is granted certificates representing stock dividends and shares resulting from stock splits of escrowed shares, recapitalizations, or other activities or events that change the number of shares or affect the initial sale of escrowed shares, those certificates must be

deposited with and held by the escrow agent subject to the terms of the escrow agreement. Any cash dividends that are granted to or received by a depositor while promotional shares are held in escrow must be deposited with and be held by the escrow agent subject to the terms of the escrow agreement, unless those cash dividends are approved by a majority of the independent directors of the issuer. The escrow agent shall invest those cash dividends as directed by the depositor. Those cash dividends and any interest earned on them may be disbursed only in proportion to the number of shares released from escrow.

(h) Equity securities that are received by a depositor as the result of the conversion or exercise of convertible securities, warrants, options, or rights to purchase common stock or similar securities while the depositor's promotional shares are in escrow must be deposited with and held by the escrow agent subject to the terms of the escrow.

(i) Until the public offering has been terminated, the issuer shall include a summary of the escrow agreement in the prospectus, subsequent amendments to the prospectus, annual reports to shareholders, proxy statements, and other disclosure materials that are used to make investment decisions.

(j) The issuer shall pay the escrow agent reasonable compensation, as set out in the escrow agreement, for the escrow agent's services. If the escrow agent is required to render additional services that are not expressly provided for in the escrow agreement, or if the escrow agent is made a party to or intervenes in any action, suit, or proceeding pertaining to the agreement, the issuer and depositors shall pay the escrow agent reasonable compensation for the additional services provided. If additional services are provided, the escrow agent, after giving written notice to the depositors and issuer, may deduct reasonable compensation from any cash dividends, interest, and proceeds that the escrow agent holds for distribution under the escrow agreement.

(k) The issuer and the depositors shall hold the escrow agent harmless from and indemnify it for any cost or liability regarding any administrative proceeding, investigation, litigation, interpretation, implementation, or interpleading relating to the escrow agreement, including the release of promotional shares and the disbursement of dividends, interest, or proceeds, unless the cost or the liability arises from the escrow agent's failure to abide by the terms of the escrow agreement.

(l) The escrow agreement must be binding upon the depositors, their heirs and assignees, and upon the issuer and escrow agent and their successors.

(m) Notwithstanding (b) of this section, promoters may not sell promotional shares that are not subject to escrow during the time that the issuer offers its securities to the public in a self-underwritten offering. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.182. RELEASE OF ESCROWED PROMOTIONAL SHARES. (a) If each of the applicable provisions of the escrow agreement required under 3 AAC 08.180 has been satisfied, and if

(1) the issuer's aggregate revenues are at least \$500,000 and the auditor's report or the issuer's latest audited financial statements do not contain an opinion or statement regarding the ability of the issuer to continue as a going concern, the escrow agent shall release two and one-half percent of the promotional shares from escrow each quarter, beginning one year after the date of completion of the offering,

shall distribute those shares pro rata among the depositors, and shall release all remaining promotional shares from escrow two years after the date of completion of the offering;

(2) the issuer's aggregate revenues are less than \$500,000, the escrow agent shall release two and one-half percent of the promotional shares from escrow each quarter, beginning two years after the date of completion of the offering, shall distribute those shares pro rata among the depositors, and shall release all remaining promotional shares from escrow four years after the date of completion of the offering; or

(3) the public offering is terminated without a sale of securities under the offering or all of the gross proceeds that were derived from the offering have been returned to the public investors, the escrow agent shall release all of the promotional shares from escrow.

(b) The escrow agent shall release promotional shares

(1) in the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the issuer's assets or securities, including by way of tender offer, or any other transaction or proceeding with a person who is not a promoter that results in the distribution of the issuer's assets or securities; and

(2) if, while the escrow agreement remains in effect, the depositors agree that

(A) all holders of the issuer's equity securities will initially share on a pro rata, per share basis in the distribution, in proportion to the amount of cash or other consideration that they paid per share of equity securities, until the public shareholders receive, or have irrevocably set aside for them, an amount that is equal to 100 percent of the public offering's price per share times the number of shares of equity securities that the public shareholders purchased under the public offering and still hold at the time of the distribution, adjusted for stock splits, stock dividends, recapitalizations, or other activities or events that change the number of shares or affect the initial sale of escrowed shares;

(B) for purposes of (A) of this paragraph, the value of consideration other than cash is subject to acceptance by the administrator; and

(C) after the initial distribution provided in (A) of this paragraph, all holders of the issuer's equity securities shall participate on an equal, per share basis times the number of shares of equity securities they hold at the time of the distribution, adjusted for stock splits, stock dividends, recapitalizations, or other activities or events that change the number of shares or affect the initial sale of escrowed shares.

(c) A distribution may proceed on lesser terms and conditions than those provided in (b) of this section if a majority of the equity securities that are not held by promoters or the associates or affiliates of promoters vote, or consent by consent procedure, to approve the lesser terms and conditions at a special meeting of the shareholders called for that specific purpose.

(d) In the event of a dissolution, liquidation, merger, consolidation, reorganization, or sale or exchange of the issuer's assets or securities, including by way of tender offer, or any other transaction or proceeding with a person who is a promoter that results in a distribution while the escrow agreement remains in effect, the depositors' promotional shares must remain in escrow subject to the terms of the escrow agreement.

(e) If securities held in escrow become federal covered securities of the type described in 15 U.S.C. 77r(b)(1) (sec. 18(b)(1) of the Securities Act of 1933), all securities in escrow must be released.

(f) An escrow agreement required under 3 AAC 08.180 terminates when all of the promotional shares have been released or the issuer's equity securities or the issuer's assets have been distributed under the agreement. However, the provisions in that escrow agreement for compensation and indemnification of the escrow agent survive until they are satisfied. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.184. DOCUMENTATION OF TERMINATION OF ESCROW. (a) A request to the escrow agent for the release of promotional shares from escrow must be in writing. The issuer shall provide the escrow agent with documentation showing that the requirements of 3 AAC 08.182 have been met.

(b) The escrow agent shall maintain all records relating to an escrow agreement required under 3 AAC 08.180 for three years following the date of termination of the agreement. The escrow agent shall forward promptly a copy of each record retained by the escrow agent to the administrator upon written request. For purposes of this subsection, the escrow agreement terminates when all of the promotional shares have been released or the issuer's equity securities or the issuer's assets have been distributed under the agreement. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.186. TRANSFER OF ESCROWED PROMOTIONAL SHARES. (a) An escrow agreement required under 3 AAC 08.180 may provide for the transferability of escrowed promotional shares by will, the laws of descent and distribution, or the operation of law, or by any court of competent jurisdiction and proper venue, as follows:

(1) the escrowed promotional shares of a deceased depositor may be hypothecated to pay the expenses of the deceased depositor's estate, if the hypothecated promotional shares remain subject to the terms of the escrow agreement;

(2) promotional shares may not be transferred, sold, or disposed of until the escrow agent receives a written statement signed by the proposed transferee that states that the transferee

(A) has full knowledge of the terms of the escrow agreement;

(B) accepts the promotional shares subject to the terms of the escrow agreement; and

(C) agrees that the promotional shares must remain in escrow until they are released under 3 AAC 08.184.

(b) Except as provided in (a)(1) of this section, the escrow agreement may not allow a pledge of escrowed promotional shares to secure a debt.

(c) The escrow agreement may allow a transfer of escrowed promotional shares by gift to the depositor's family members, if the promotional shares remain subject to the terms of the escrow agreement.

(d) Except as provided in (a)(2) or (c) of this section, the escrow agreement may not allow the transfer of escrowed promotional shares, an interest in those shares, or a right or title to those shares. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.190. IMPOUNDMENT OF PROCEEDS. (a) If an offering is not firmly underwritten, the administrator will, in the administrator's discretion, require, as a condition of registration, that a specific minimum amount of proceeds from a sale of securities be impounded to assure receipt of necessary money to finance the proposed undertaking as described in the application.

(b) If the administrator orders an impoundment agreement, the proceeds from the sale of the securities must be deposited in an interest bearing escrow or trust account under an impoundment agreement with an impoundment agent. The impoundment agent may not be affiliated with the issuer, the issuer's affiliates, the issuer's officers or directors, the issuer's underwriters, or any promoter.

(c) The impoundment agreement must be signed by an officer of the issuer, an officer of the underwriter, if applicable, and an officer of the impoundment agent, who must each warrant that they have the authority to sign the documents. A signed copy of the agreement must be filed with the administrator and, together with a summary of the principal terms of the agreement, becomes part of the registration statement.

(d) The impoundment agreement must provide that the impounded proceeds are not subject to claims by creditors until the proceeds have been released to the issuer and that the administrator has the right to inspect and make copies of the records of the impoundment agent at any reasonable time wherever the records are located. For purposes of this subsection, "creditors" means creditors of the

- (1) issuer;
- (2) issuer's affiliates;
- (3) issuer's associates; or
- (4) underwriters of the issuer's offering.

(e) The impoundment agent shall notify the administrator in writing upon the release of the proceeds. If the proceeds are insufficient to attain, within the time prescribed by the impoundment agreement, the minimum amount of proceeds set under 3 AAC 08.135(f), the impoundment agent shall release and return the proceeds directly to the investors without deduction for expenses, including impoundment agent fees, and shall distribute all interest earned pro rata to the investors along with the proceeds.

(f) If a person who is an underwriter for the issuer's offering or an officer, director, promoter, affiliate, or associate of the issuer purchases securities that are a part of the public offering being sold under the registration statement, and if the proceeds from that purchase are used to attain the minimum amount of proceeds set under 3 AAC 08.135(f),

- (1) the purchase of the securities must be on the same terms as purchases by unaffiliated public investors; and
 - (2) the prospectus must contain a disclosure that those persons may purchase securities of the issuer for purposes of completing the impoundment requirements imposed by this section. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)
- Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.200. REAL ESTATE INVESTMENT TRUSTS. (a) The administrator will, in the administrator's discretion, determine that an offering or sale of securities in an issuer that qualifies as a real estate investment trust under 26 U.S.C. 856 and 858 (Internal Revenue Code) does not protect investors and is not in the public interest,

unless that trust's declaration of trust or other organizational instrument contains provisions that satisfy the following minimum conditions:

(1) a majority of the trustees may not be affiliated with the adviser of the trust or any organization affiliated with the adviser of the trust; the trustees must be elected by the shareholders of the trust annually;

(2) self dealing must be restricted as follows:

(A) a trustee, officer, or adviser of the trust, or any person affiliated with that person may not, directly or indirectly, sell property or assets to the trust, purchase property or assets from the trust, or receive a commission or other remuneration in connection with the purchase or sale of trust assets, except under transactions that are fair and reasonable to the shareholders of the trust and that relate to the acquisition by the trust of

(i) property or assets at the formation of the trust or shortly thereafter that is fully disclosed in the prospectus;

(ii) federally insured or guaranteed mortgages at prices not exceeding the currently quoted prices at which the Federal National Mortgage Association purchases comparable mortgages;

(iii) mortgages other than those described in (ii) of this subparagraph, on terms not less favorable to the trust than similar transactions involving unaffiliated parties; or

(iv) property other than property described in (i)-(iii) of this subparagraph, at prices not exceeding the fair value of that property as determined by independent appraisal;

(B) transactions described in (A) of this paragraph and all other transactions in which a trustee, officer, or adviser of the trust have a direct or indirect interest must be approved by a majority of the trustees, including a majority of the independent trustees; commissions or remuneration received by any of those persons in connection with any of those transactions must be deducted from the advisory fee;

(3) fees and expenses that the trust incurs or pays must be restricted as follows:

(A) the aggregate annual expenses of every character paid or incurred by the trust may not exceed two and one-half percent of the total invested assets of the trust, and may not exceed the greater of

(i) two and one-half percent of the average net assets of the trust; net assets must be calculated at least quarterly on a basis consistently applied;

(ii) 25 percent of the net income of the trust, before deducting advisory and servicing fees and expenses; net income must be calculated at least quarterly on a basis consistently applied;

(B) the adviser must reimburse the trust at least annually for the amount by which aggregate annual expenses paid or incurred by the trust exceed the amounts set out in (A) of this paragraph;

(C) for purposes of this paragraph, aggregate annual expenses

(i) include advisory fees and mortgage servicing fees; and

(ii) do not include interest, taxes, or expenses in connection with the issuance of securities or shareholder relations, or the acquisition, operation, maintenance, protection, or disposition of trust properties;

- (D) for purposes of this paragraph, net income does not include provision for depreciation, realized capital gains or losses, or extraordinary items;
- (4) leverage may not be unreasonable in relation to the net assets of the trust, and the maximum amount of leverage in relation to the net assets must be stated in the prospectus;
- (5) minimum capital must be the lesser of \$200,000 or 10 percent of the net assets of the trust upon completion of the public offering;
- (6) a trust may not
 - (A) invest more than 10 percent of its total assets in unimproved real property or mortgages on unimproved real property, except for property that is being developed or will be developed within a reasonable period;
 - (B) invest more than 10 percent of its total assets in junior mortgages, except for wraparound type junior mortgages;
 - (C) engage in any material trading activities with respect to its properties;
 - (D) issue redeemable equity securities or equity securities of more than one class;
 - (E) issue debt securities to the public unless the historical cash flow of the trust or the substantiated future cash flow of the trust, excluding extraordinary items, is sufficient to cover the interest on the debt securities; or
 - (F) issue options or warrants to purchase its securities to the adviser of the trust or any person affiliated with the adviser, or to a person at exercise prices less than the fair market value of those securities on the date of grant;
- (7) an advisory contract entered into by the trust
 - (A) before the initial public offering may not exceed three years in length;
 - (B) after the initial public offering may not exceed one year in length; and
 - (C) must be terminable at any time without penalty, by the trustees or a majority of the holders of outstanding shares of beneficial interest, upon not less than 60 days' written notice to the adviser;
- (8) the trust must prepare reports and hold meetings as follows:
 - (A) the trust must prepare an annual report concerning its operations for each fiscal year ending after the public offering of the trust's securities, including financial statements certified by independent public accountants and prepared in accordance with generally accepted accounting principles applied on a consistent basis; the annual report must be delivered to each public shareholder and debenture holder within 120 days after the end of the fiscal year;
 - (B) the trust must hold an annual meeting of the holders of outstanding shares of beneficial interest of the trust, upon reasonable notice, following delivery of the annual report prepared as required in (A) of this paragraph;
 - (C) the trust must file with the administrator the annual report required under (A) of this paragraph and other interim reports delivered to public shareholders.
- (b) In this section,

(1) "leverage" means the aggregate secured and unsecured borrowings of the trust;

(2) "minimum capital" means the net assets of the trust before the initial public offering;

(3) "net assets" means total invested assets at cost before deducting depreciation reserves, less total liabilities. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.120

AS 45.55.950

3 AAC 08.210. UNEQUAL VOTING RIGHTS OF STOCK. (a) If stock, including preferred or common stock, has less-than-equal voting rights compared to another of the issuer's authorized or outstanding stock, including preferred or common stock, the administrator will, in the administrator's discretion, determine that the offer or sale of that stock does not protect investors and is not in the public interest, unless

(1) the securities are given preferential treatment as to dividends and liquidation, or the less-than-equal voting rights are justified by the issuer to the administrator's satisfaction; and

(2) the terms of the voting rights are prominently disclosed on the cover page of the issuer's circular or prospectus.

(b) In this section, "less-than-equal voting rights" means unequal voting rights

(1) in proportion to the number of shares of each class of stock outstanding; and

(2) on any matter, including the election of members to the board of directors of the issuer. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.120

AS 45.55.950

3 AAC 08.215. LOANS AND OTHER MATERIAL AFFILIATED TRANSACTIONS. (a) If loans and other material affiliated transactions as described in this section are made or proposed to be made, the administrator will, in the administrator's discretion, disallow the offer or sale of securities unless the issuer has, and represents in the prospectus or offering document that the issuer will maintain, at least two independent directors on its board of directors.

(b) The administrator will, in the administrator's discretion, disallow the offer or sale of securities if the issuer or its affiliates will have a loan or loan guarantee outstanding to a promoter after the offering, or intends to make a loan to or a loan guarantee on behalf of a promoter, other than

(1) an advance to an officer, director, or employee for travel, business expenses, and similar ordinary operating expenditures;

(2) loans or loan guarantees made for the purchase of an issuer's securities by its officers, directors, and employees, and loans for relocation of officers, directors, and employees, if those loans or loan guarantees that are ongoing are approved by a majority of the independent directors without an interest in the transactions, and if those independent directors had access, at the issuer's expense, to the issuer's or independent legal counsel; or

(3) a loan made by an issuer or an affiliate whose primary business is that of making loans, if

(A) the loan is evidenced by a promissory note naming the lender as payee;

(B) the loan bears interest at a rate comparable to that generally charged by other commercial lenders for similar loans made in the lender's locale;

(C) the loan is to be repaid under appropriate amortization schedules, and contains default provisions comparable to those generally used by other commercial lenders for similar loans made in the lender's locale;

(D) the loan is to be made only if credit reports and financial statements show the loan to be collectible and the borrower is a satisfactory credit risk, in light of the nature and terms of the loan and other circumstances;

(E) the loan meets the loan policies generally used by other commercial lenders for similar loans made in the lender's locale;

(F) the purposes of the loan and the disbursement of proceeds are to be reviewed and monitored in a manner comparable to that generally used by other commercial lenders for similar loans made in the lender's locale; and

(G) the loan does not violate the requirements of any banking or other financial institution regulatory authority.

(c) Except for a loan described in (b) of this section, each loan existing at the time of the application for registration must be repaid in full before the offering. The administrator will, in the administrator's discretion, waive this requirement if

(1) repayment of the loan will be made under appropriate amortization schedules; or

(2) a portion of the offering is made on behalf of a promoter and the promoter agrees to repay the loan from the proceeds of the offering.

(d) The administrator will, in the administrator's discretion, disallow the offer or sale of securities if the issuer or an affiliate have engaged in a material transaction with promoters, unless

(1) the prospectus discloses the terms of the transaction and indicates whether those terms are as favorable to the issuer or its affiliates as those generally available from unaffiliated third parties; and

(2) for an issuer whose board of directors includes

(A) two or more independent directors without an interest in the transaction, a majority of those directors ratifies the transaction; those independent directors must have access, at the issuer's expense, to the issuer's or independent legal counsel; or

(B) less than two independent directors without an interest in the transaction, the prospectus discloses that the issuer lacked sufficient disinterested independent directors to ratify the transaction at the time the transaction was initiated.

(e) The issuer shall disclose in the prospectus or offering document if the issuer or an affiliate makes or intends to make a loan to, makes or intends to make a loan guarantee on behalf of, or engages or intends to engage in a material transaction with promoters, and shall also disclose the terms of that transaction. If a material transaction with or loan to promoters has been made, or may be made, the administrator will, in the administrator's discretion, require the following representations to appear in the prospectus or offering document:

(1) that any future material transaction with or loan to promoters will be made or entered into on terms that are no less favorable to the issuer than those that can be obtained from unaffiliated third parties;

(2) that any future material transaction with or loan to promoters, and any forgiveness of a loan, will be approved by a majority of the issuer's independent directors without an interest in the transaction, and that those independent directors will have access, at the issuer's expense, to the issuer's or independent legal counsel.

(f) The issuer and its officers and directors shall consider

(1) their due diligence and other obligations to affirmatively demonstrate a reasonable basis for the representations in (d) and (e) of this section; and

(2) whether to formalize, in the issuer's charter or bylaws, the representation made as described in (e)(2) of this section.

(g) In order to satisfy the ratification provisions of (b)(2), (d)(2)(A), and (e)(2) of this section, the issuer must have on its board of directors at least two independent directors without an interest in the transaction. If the issuer has on its board of directors only two independent directors without an interest in the transaction, both independent directors must approve a loan and other material transaction to satisfy the ratification provisions of (b)(2), (d)(2)(A), and (e)(2) of this section.

(h) The administrator will, in the administrator's discretion, waive any part of this section upon the issuer's petition or as part of a coordinated review with other regulatory jurisdictions. (Eff. 4/19/2000, Register 154)

Authority AS 45.55.950

3 AAC 08.220. DEBENTURES. (a) Repealed 4/19/2000, Register 154).

(b) The administrator will, in the administrator's discretion, determine that an offer or sale of debt securities, including debentures, notes, and bonds of an issuer, does not protect investors, is not in the public interest, and involves unreasonable participation by any promoters holding equity securities if

(1) the cash flow of the issuer for the last year before the public offering, or the average cash flow of the issuer over the last three years before the public offering, exclusive of non-recurring items and adjusted for the issuance of debt securities or the substantiated future cash flow capability of the issuer, is insufficient to cover the interest on the securities proposed to be offered to the public; or

(2) the ratio of debt to equity on the balance sheet of the issuer exceeds two to one unless the administrator finds that participation in the public interest and consistent with the protection of the investors in the debt security proposed to be offered.

(c) If the issuer makes a material acquisition after the latest year for which actual figures are stated in the prospectus, the issuer shall make the computation of earnings or cash flow in this section on a pro forma basis to include those acquisitions.

(d) The issuance of debentures by an issuer in the promotional or developmental stage will not be permitted unless justified by the applicant as protective of investors or in the public interest.

(e) This section does not apply to the issuance of

(1) debt securities by a non-profit issuer;

(2) industrial development revenue bonds;

(3) securities under a voluntary or involuntary corporate reorganization; or

(4) securities by an issuer whom a federal or state governmental authority regulates with respect to the issuer's financial structure or the issuance of those securities. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154)

Authority: AS 45.55.120

AS 45.55.950

3 AAC 08.222. SUITABILITY STANDARDS. In reviewing the registration application of a commodity or option pool, or other investment considered by the administrator to be above average in terms of risk of loss or volatility, the administrator will, in the administrator's discretion, require that the issuer offer the security only to purchasers with

(1) a minimum annual gross income of \$60,000 and a minimum net worth of \$60,000, exclusive of principal automobile, principal residence, and home furnishings; or

(2) a minimum net worth of \$225,000, exclusive of principal automobile, principal residence, and home furnishings. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.120

AS 45.55.950

3 AAC 08.225. PREFERRED STOCK. (a) The administrator will, in the administrator's discretion, disallow a public offering of preferred stock if

(1) the issuer's adjusted net earnings for the last fiscal year or the issuer's average adjusted net earnings for the last three fiscal years before the public offering were insufficient to

(A) pay the issuer's fixed charges and preferred stock dividends, whether or not accrued; and

(B) meet the redemption requirements, if applicable, of the preferred stock being offered; or

(2) a cash analysis indicates that the issuer lacks sufficient cash to cover the preferred stock dividend, whether or not declared.

(b) If determining whether to disallow, under (a)(2) of this section, a public offering of preferred stock, the administrator will, in the administrator's discretion,

(1) consider the statement of cash flows, if the statement demonstrates that the issuer had positive net cash provided by operating activities for the issuer's last fiscal year before the public offering; or

(2) require the issuer to submit a financial statement demonstrating that the issuer had average positive net cash provided by operating activities for the issuer's last three fiscal years before the public offering.

(c) The requirements of (a) and (b) of this section apply to a public offering of convertible preferred stock that is superior in right to payment of dividends, interest, and liquidation proceeds to any preferred stock and convertible debt that is or may be legally or beneficially, directly or indirectly, owned by promoters. The risks of failure to declare or pay dividends and the equity characteristics of the convertible preferred stock must be disclosed in the prospectus. The administrator will, in the administrator's discretion, review an offering of these securities using the requirements in AS 45.55 and this chapter for equity offerings.

(d) If the issuer's net earnings are subject to cyclical fluctuations or if the administrator determines redemption requirements to be necessary for investor protection, the administrator will, in the administrator's discretion, require that the issuer establish redemption requirements.

(e) The administrator will, in the administrator's discretion, disallow a public offering of equity securities if the issuer's articles of incorporation authorize the issuer's

board of directors to issue preferred stock in the future without a vote of the common shareholders, unless

(1) the issuer represents in its prospectus or offering document that the issuer will not offer preferred stock to a promoter except on the same terms as that stock is offered to all other existing shareholders or to new shareholders; or

(2) the issuance of preferred stock is approved by a majority of the issuer's independent directors without an interest in the transaction; those directors must have access, before voting and at the issuer's expense, to the issuer's or independent legal counsel; if the issuer has on its board of directors only two independent directors without an interest in the transaction, both independent directors must approve the issuance of preferred stock. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.120 AS 45.55.950

3 AAC 08.227. PARTICIPATION IN COORDINATED SECURITIES REVIEWS. The administrator will, in the administrator's discretion, participate with other regulatory jurisdictions in the review of applications to register securities. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.950

3 AAC 08.230. EFFECTIVENESS, POST-REGISTRATION, AND POST-NOTICE REQUIREMENTS FOR SECURITIES. (a) After an application for registration of securities or a notice filing for federal covered securities becomes effective the offering may be commenced in accordance with AS 45.55 and the terms and conditions of the certificate of registration. The administrator will, in the administrator's discretion, delay issuance of a certificate of registration of securities, but not a certificate of notice pending an applicant's completion of arrangements satisfactory to the administrator for the sale and distribution of the securities.

(b) The administrator will, in the administrator's discretion, terminate an application for registration or exemption before the effective date of the registration or exemption, if the applicant requests withdrawal, or if the offering has been abandoned or discontinued for three months after the date that the application was received. The withdrawal or termination does not preclude commencement of proceedings for denial, suspension, or revocation of registration as provided in AS 45.55.120.

(c) If an application is withdrawn or terminated under (b) of this section, the administrator will record that action in the register of applications maintained under AS 45.55.970(b). The administrator will notify the applicant by regular mail that the application has been terminated. The applicant may submit a new application, which will be treated as a new application by the administrator.

(d) The administrator will notify an applicant by deficiency letter of an omission or noncompliance with any requirement for registration. An applicant's failure to comply with the requirements of a deficiency letter is grounds for entry of a stop order under AS 45.55.120.

(e) Before its effective date as determined under 3 AAC 08.085(d), a notice filing for federal covered securities may be withdrawn by the applicant or terminated by the administrator, upon the request of the applicant, or if the notice filer refuses to pay the required notice filing fee. For purposes of this subsection, a notice filer is considered to have refused to pay the required notice fee if the administrator sends a letter by regular mail to the notice filer informing the notice filer of the deficiency of the notice fee, and

the administrator does not receive full payment of the notice fee within 30 calendar days after the date the letter was sent.

(f) The administrator will terminate a notice filing for federal covered securities by recording that action in the register of notice filings maintained under AS 45.55.970(b). The administrator will notify the notice filer by regular mail that the notice filing has been terminated. The notice filer may submit a new notice, which will be treated as a new notice by the administrator.

(g) After filing an application for registration, and during the period that a registration is effective, the applicant or registrant shall promptly file with the administrator a correcting amendment within 15 days after discovery of

(1) a statement, document, or information contained in the application that has become inaccurate, incorrect, or misleading; or

(2) a change in circumstances that makes an amendment necessary for a full and fair disclosure of all material facts affecting the issuer's business or offering.

(h) A registrant shall file an amended prospectus as required under 3 AAC 08.120(d)-(e).

(i) An amendment under (g) or (h) of this section must contain the appropriate information or document to which the change pertains. If a document is being amended, a revised form or marked copy must be submitted, or a copy of an existing document, pertinent pages from that document, or a sticker amendment reflecting the changes must be attached. A deletion must be identified by lining through wording, and a substitution or addition must be identified by underlining new language.

(j) If an amendment under (h) of this section to a prospectus is presented in "draft" or "proof" form, a final copy of the prospectus must be filed when completed.

(k) An applicant for registration by qualification, in addition to the copies of amendments, prospectuses, and financial statements, must file a copy of each amendment marked to indicate clearly and precisely the changes effected in the registration statement by that amendment; if the amendment alters the text of the prospectus or of any item, exhibit, or other document previously filed as a part of the registration statement, the changes in the text must be indicated by means of underlining or in some other appropriate manner.

(l) An issuer that offers its securities for sale under a registration, other than through a broker-dealer, shall preserve the following records during the period those securities are offered for sale and for three years following the expiration date of the registration to sell those securities:

(1) a copy of the application for registration with exhibits;

(2) a copy of each advertisement, together with a complete record of the dates, names and addresses of media carrying that advertisement;

(3) the original of any communication received and a copy of any communication sent by the issuer pertaining to the offering, sale, and transfer of the securities;

(4) the original of each subscription or purchase agreement executed by purchasers of those securities;

(5) a list with the name and address of each person purchasing those securities, the amount and type of securities purchased by each, the consideration paid by each, whether payment by that person was in cash, property, services, a note, or another form, and the name of the agent making the sale to that person;

(6) a list with the name and address of each person selling securities for the issuer and the date each was registered to sell securities for the issuer.

(m) The requirements of (g)-(l) of this section do not apply to an issuer that submits a notice filing for federal covered securities. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154; am 10/26/2000, Register 156)

Authority: AS 45.55.075 AS 45.55.110 AS 45.55.120 AS 45.55.950

ARTICLE 03. ALASKA NATIVE CLAIMS ACT CORPORATIONS: SOLICITATION OF PROXIES

Section

305 Application of 3 AAC 08.305 – 3 AAC 08.365
315 False of misleading statements
325 Prohibition of certain solicitations
335 Requirements as to proxy
345 Board solicitations
355 Non-board solicitations
365 Definitions relating to solicitation of proxies

3 AAC 08.305. APPLICATION OF 3 AAC 08.305 - 3 AAC 08.365. 3 AAC 08.305 - 3 AAC 08.365 apply only to corporations organized under AS 10.05 pursuant to the Alaska Native Claims Settlement Act (PL 92-203; 85 Stat. 688; 43 USC Sec. 1601 et seq.) and subject to the requirements of AS 45.55.139. Eff. 1/4/81, Register 77)
Authority AS 45.55.138 AS 45.55.139 AS 45.55.240

3 AAC 08.315. FALSE OR MISLEADING STATEMENTS. (a) A solicitation may not be made by means of a proxy statement, proxy, notice of meeting, or other communication that contains a material misrepresentation. A misrepresentation is a statement that, at the time and under the circumstances in which it is made (1) is false or misleading with respect to a material fact; (2) omits a material fact necessary in order to make a statement made in the solicitation not false or misleading; or (3) omits a material fact necessary to correct a statement, in an earlier communication regarding the solicitation of a proxy for the same meeting or subject matter, which has become false or misleading. A misrepresentation is material if there is substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. A series of statements or omissions that are objectively false or misleading, but which might not be material misrepresentations if considered separately, might be material misrepresentations if there is a substantial likelihood that a reasonable shareholder would consider the series important in deciding how to vote. Subjective proof that one or more shareholders actually granted a proxy because of a misrepresentation is not required. The following are some examples of what, depending upon particular facts and circumstances, might be misleading within the meaning of 3 AAC 08.305 - 3 AAC 08.365:

- (1) predictions as to specific future market values;
 - (2) material that directly or indirectly impugns character, integrity, or personal reputation, or directly or indirectly makes charges concerning improper, illegal, or immoral conduct or associations, without factual foundation;
 - (3) failure to identify a proxy statement, proxy, or other soliciting material so as to distinguish it clearly from the soliciting material of any other person soliciting for the same meeting or subject matter;
 - (4) claims made before a meeting regarding the results of a solicitation;
- and
- (5) regarding the election of directors, failure to disclose the existence of an agreement or understanding among two or more nominees, proxyholders, or other

participants with respect to voting of proxies, and failure to disclose the material provisions of such an agreement or understanding, in circumstances where such participants appear to solicit proxies independently or where there is no apparent affiliation among such participants.

(b) The fact that a proxy statement, proxy, or other soliciting material has been filed with or examined by the administrator under AS 45.55.139 is not a finding by the administrator that the material is accurate or complete or not false or misleading, or that the administrator has passed upon the merits of or approved any statement contained in the solicitation or any matter to be acted upon by shareholders. No representation to the contrary may be made.

(c) The administrator may require a person who has brought to his attention a solicitation which the person believes contains materially false or misleading statements to explain the reasons for his view in writing. (Eff. 1/4/81, Register 77; am 11/27/88, Register 108)

Authority AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.170
AS 45.55.240

3 AAC 08.325. PROHIBITION OF CERTAIN SOLICITATIONS. A person may not solicit

- (1) an undated or postdated proxy;
- (2) a proxy which provides that it is dated after the date on which it is signed by the shareholder;
- (3) a proxy which fails to disclose the shareholders' meeting, or any adjournment of that shareholders' meeting, for which it is solicited;
- (4) a proxy which confers authority to vote at more than one shareholders' meeting or any adjournment of that shareholders' meeting; or
- (5) a proxy which authorizes a vote at any shareholders' meeting other than the one disclosed. (Eff. 1/4/81, Register 77)

Authority AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.240

3 AAC 08.335. REQUIREMENTS AS TO PROXY. (a) A proxyholder shall either attend the shareholders' meeting in person or execute a power of substitution so that the shares for which he has proxies are represented at the meeting.

(b) A proxyholder shall vote in accordance with any choices made by the shareholder or in the manner provided by the proxy when the shareholder has not specified a choice.

(c) The proxy must

- (1) indicate that the proxy is solicited on behalf of the board or, if solicited other than by the board, indicate the identity of the persons on whose behalf the solicitation is made;
- (2) provide a specifically designated blank space for dating the proxy; and
- (3) provide a means for the shareholder to specify by boxes a choice between approval or disapproval of each matter or group of related matters identified in the proxy as intended to be acted upon, other than the election of directors.

(d) A proxy may confer authority for matters on which a choice is not made by the shareholder if the proxy discloses how the shares represented by the proxy will be voted in each case.

(e) A proxy that provides for the election of directors must

- (1) set out the names of the nominees for whom the proxy is solicited; and
 - (2) clearly provide one of the following:
 - (A) a box opposite the name of each nominee which may be marked to indicate that authority to vote for that nominee is withheld;
 - (B) an instruction that the shareholder may withhold authority to vote for a nominee by lining through or otherwise striking out the name of that nominee;
 - (C) a "ballot" type of selection in which the shareholder is permitted to award votes to selected nominees of the shareholder's choosing.
 - (f) A proxy may confer discretionary authority to vote only with respect to the following:
 - (1) matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting;
 - (2) approval of the minutes of the prior meeting if the approval does not amount to ratification of the action taken at that meeting;
 - (3) the election of a person to an office for which a bona fide nominee is named in the proxy statement and the nominee is unable to serve or for good cause will not serve;
 - (4) a proposal omitted from the proxy statement and proxy, if solicited for an annual meeting by participants other than the board; or
 - (5) matters incident to the conduct of the meeting.
 - (g) If action is to be taken on the election of directors and if the shareholders have cumulative voting rights, a proxy may confer discretionary authority to cumulate votes. (Eff. 1/4/81, Register 77; am 11/27/88, Register 108)
- Authority AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.240

- 3 AAC 08.345. BOARD SOLICITATIONS.** (a) The solicitation of proxies on behalf of the board for an annual meeting must be preceded or accompanied by the annual report for the corporation's last fiscal year, unless
- (1) the solicitation is made on behalf of the board before the annual report is available;
 - (2) solicitation is being made at the time in opposition to the board; and
 - (3) the board's proxy statement includes an undertaking to furnish the annual report to all shareholders being solicited at least 50 days before the date of the annual meeting.
- (b) The solicitation of proxies on behalf of the board must be preceded or accompanied by a dated, written proxy statement including, but not limited to, the following:
- (1) if action is to be taken on the election of directors, a description of each nominee of the board who has consented to act if elected and of each director whose term of office will continue after the shareholders' meeting; each description must include
 - (A) name, age and address;
 - (B) all positions and offices presently held with the corporation;
 - (C) remaining term in office as director and all other periods of service as a director;
 - (D) percentage attendance during the last fiscal year at meetings of the board, including regularly scheduled and special meetings, and meetings of

committees on which he served, if he attended fewer than 75 percent of the aggregate of these meetings;

(E) the nature of any family relationship with any director, nominee or executive officer of the corporation and its subsidiaries;

(F) business experience during the past five years, including principal employment or occupation and employer;

(G) any of the following events which occurred during the past five years which are material to an evaluation of ability or integrity: voluntary or involuntary petition under any bankruptcy or insolvency laws, appointment of a receiver, conviction or plea of nolo contendere in a criminal proceeding, except traffic violations or other minor offenses, and the entry of any final judgment, order or decree, not subsequently reversed or vacated, that he engaged in unethical or illegal business practices or violated securities laws; and

(H) financial transactions by the corporation with any entity since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation with any entity if

(i) the transactions in the aggregate exceed \$20,000; and

(ii) the nominee, director, or a member of his family is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;

(2) a statement of all current remuneration distributed or accrued and of all future remuneration contributed during the corporation's last fiscal year on behalf of

(A) each of the five most highly compensated directors or officers for his services in all capacities to the corporation and its subsidiaries, naming each such person; and

(B) all officers and directors as a group, stating the number of persons in the group without naming them; future remuneration contributed includes amounts which were reported in the corporation's annual report for the last fiscal year for annuity, pension or retirement plans and for deferred compensation or profit sharing plans; information need not be furnished regarding costs for ordinary and necessary business expenses or for personal benefits, group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the corporation and which are available generally to all salaried employees;

(3) a brief description of financial transactions by the corporation with any entity since the beginning of the corporation's last fiscal year and any presently proposed financial transactions by the corporation with any entity if

(A) the transactions in the aggregate exceed \$20,000; and

(B) the executive officer or a member of his family is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;

(4) a brief description of all legal proceedings to which any director or executive officer is a party with interests adverse to the corporation or its subsidiaries;

(5) if action is to be taken on the election of directors or other matters for which the financial statements are material to the exercise of prudent judgment, a description of the corporation's relationship with its independent public accountants; this description must include

(A) the name of the principal accountant for the last fiscal year;

(B) a statement indicating whether representatives of the principal

accountant are expected to be present at the meeting with the opportunity of making a statement, if they so desire, and with the responsibility of responding to appropriate questions;

(C) each professional service provided by the principal accountant and paid for by the corporation during the last fiscal year, such as preparation of corporate tax returns, preparation of personal tax returns, review of proposed corporate acquisitions, review of personal investments, or development of corporate data processing systems;

(D) the percentage relationship which the aggregate of the fees for all nonaudit services bears to the aggregate of fees for both audit and nonaudit services performed by the principal accountant and paid for by the corporation;

(E) each disagreement with the principal accountant in connection with audits of the last two fiscal years and any subsequent interim period if (i) the principal accountant has been changed since the date of publication or distribution of the proxy statement for the last annual meeting; and (ii) there have been disagreements on matters of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former principal accountant, would have caused him to make references to the disagreements in his audit report; the corporation must, at least 20 days before the date of publication or distribution of the proxy statement, furnish by certified mail its description of any disagreements to the former principal accountant; if the former principal accountant believes the description to be incorrect or incomplete, and he forwards to the corporation, within 10 days of the date of his receipt of the corporation's description, a brief written statement of his view, the statement must be included in the corporation's proxy statement;

(6) a brief description of any arrangement, stating amounts, by which a director is compensated for all services as a director of the corporation and its subsidiaries, including any additional amounts payable for committee participation or special assignments; information need not be furnished regarding costs for ordinary and necessary business expenses or for personal benefits, group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the corporation and which are available generally to all salaried employees;

(7) a list of the board's committees, if any, performing audit, nominating and compensation functions, the membership of each committee, the number of meetings held by each committee during the last fiscal year, and a brief description of the functions actually performed by each committee;

(8) a brief description of the methods to be employed to solicit proxies, if other than by use of the mail, and a statement that solicitation is made on behalf of the board;

(9) a statement of the total amount estimated to be spent and the total already expended on the solicitation of proxies; expenditures include fees for attorneys, accountants, solicitors, and public relations or financial advisers and expenses for advertising, printing, transportation, litigation, or other expenses incidental to the solicitation; however, the following expenses may be excluded:

(A) the amounts which the corporation would normally spend on a solicitation for an election of directors in the absence of a contest; and

(B) the salaries and wages of regular employees and officers, if a statement to that effect is included in the proxy statement;

(10) a statement indicating who will bear the cost of solicitation and the total amount any participant, other than the board and the corporation, has contributed or has agreed to contribute, unless the participant is a contributor of less than \$500 in the aggregate;

(11) a statement describing any formal procedure or deadline limiting the shareholder's rights to revoke a proxy before its exercise;

(12) a statement of the number of shares outstanding and entitled to be voted at the meeting;

(13) a statement of the date on which the record of shareholders entitled to vote at the meeting will be determined; if the right to vote is not limited to shareholders of record on that date, the solicitation must indicate the conditions under which other shareholders may be entitled to vote;

(14) if action is to be taken on the election of directors and if the shareholders have cumulative voting rights

(A) a statement that they have the rights; and

(B) a brief description of those rights;

(15) for each matter which is to be submitted to a vote of the shareholders, other than the election of directors, a description of the proposal and a statement of the vote required for its approval; for example, if action is to be taken on

(A) a proposed amendment to the articles of incorporation or bylaws, the description must include the reasons for and general effect of the amendment; or

(B) a proposed property transaction, the description must

(i) outline the material features of the proposed transaction;

(ii) state the nature and amount of consideration and, to the extent practicable, outline the facts which bear on the question of the fairness of consideration; and

(iii) state the name and address of the other party or parties to the proposed transaction and the nature of any material relationship of the party or parties to the corporation, its subsidiaries, officers, or directors; and

(16) a brief description of any substantial interest, direct or indirect, by shareholdings or otherwise, of each participant or executive officer in any matter to be acted upon at the meeting, unless the participant or executive officer owns shares in the corporation and would receive no extra or special benefit not shared on a pro rata basis by all other shareholders of the same class. Eff. 1/4/81, Register 77; am 11/27/88, Register 108)

Authority AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.240

3 AAC 08.355. NON-BOARD SOLICITATIONS. The solicitation of proxies on behalf of a participant, other than solicitations under 3 AAC 08.345, must be preceded or accompanied by a dated, written proxy statement including, but not limited to, the following:

(1) the name of the corporation in respect to which proxies are being solicited;

(2) the name and address of each participant, including each proxyholder, who has joined or proposes to join in the solicitation;

(3) a statement indicating whether any of the participants in the solicitation has an arrangement or understanding with an entity for future employment by the

corporation or future financial transactions to which the corporation will or may become a party, and a description listing the terms of and the parties to each arrangement or understanding;

(4) if action is to be taken on the election of directors, a description of each nominee of the participant who has consented to act if elected; each description must include, if applicable

(A) name, age and address;

(B) all positions and offices presently held with the corporation;

(C) remaining term in office as director and all other periods of service as a director;

(D) percentage attendance during the last fiscal year at meetings of the board, including regularly scheduled and special meetings, and meetings of committees on which he served, if he attended fewer than 75 percent of the aggregate of these meetings;

(E) the nature of any family relationship with any director, nominee or executive officer of the corporation and its subsidiaries;

(F) business experience during the past five years, including principal employment or occupation and employer; and

(G) any of the following events which occurred during the past five years which are material to an evaluation of ability or integrity: voluntary or involuntary petition under any bankruptcy or insolvency laws, appointment of a receiver, conviction or plea of nolo contendere in a criminal proceeding, except traffic violations or other minor offenses, and the entry of any final judgment, order or decree, not subsequently reversed or vacated, that he engaged in unethical or illegal business practices or violated securities laws;

(5) brief description of financial transactions by the corporation with any entity since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation with any entity if

(A) the transactions in the aggregate exceed \$20,000; and

(B) the participant in the solicitation or a member of his family is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;

(6) a brief description of all legal proceedings to which each participant in the solicitation is a party with interests adverse to the corporation or its subsidiaries;

(7) a brief description of the methods to be employed to solicit proxies, if other than by the use of the mail;

(8) a statement of the total amount estimated to be spent and the total already expended on the solicitation of proxies;

(9) a statement indicating who will bear the expense of solicitation, and the amount each participant in the solicitation has contributed or has agreed to contribute, unless the participant is a contributor of less than \$500 in the aggregate;

(10) a statement indicating whether reimbursement for solicitation expenses will be sought from the corporation; and

(11) if the proxy statement relates to any matter requiring notice to shareholders by law or to a special shareholders' meeting for which any participant in the solicitation sought shareholder signatures on a document calling for the special meeting

(A) a description of each matter which is to be submitted to a vote of the shareholders and a statement of the vote required for its approval; and

(B) a description of any substantial interest, direct or indirect, by

shareholdings or otherwise, of each participant in the solicitation in any matter to be acted upon at the meeting, unless the participant owns shares in the corporation and would receive no extra or special benefit not shared on a pro rata basis by all other shareholders of the same class. Eff. 1/4/81, Register 77)

Authority AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.240

3 AAC 08.365. DEFINITIONS RELATING TO SOLICITATION OF PROXIES.

For purposes of 3 AAC 08.305 - 3 AAC 08.365 , the following definitions apply:

(1) "annual report" means a summary by the corporation of its business activities, results of operations, and financial condition for the last fiscal year, including consolidated financial statements, which meet the requirements of 43 U.S.C. Sec. 1606(o), effective December 18, 1971, and 43 U.S.C. Sec. 1625, effective January 2, 1976;

(2) "board" means the board of directors of the issuer of shares for which a proxy is solicited;

(3) "contest" means an issue in which the board expects one or more solicitations to be made which will be subject to 3 AAC 08.355 ;

(4) "corporation" means the issuer of shares with respect to which a proxy is solicited;

(5) "entity" means an individual, sole proprietorship, partnership, joint venture, trust, association, firm, corporation, or other organization, whether or not operated for profit, which is not a wholly owned subsidiary of the corporation;

(6) "executive officer" means the president, secretary, treasurer, a vice president in charge of a principal business function, such as sales, administration, or finance, or any other person who performs similar policy-making functions for the corporation;

(7) "family" means an individual's spouse, parents, children, or siblings by blood or adoption;

(8) "financial transaction" means

(A) the buying, selling, or leasing of real or personal property or of an interest in real or personal property, including, but not limited to, an option, right of first refusal, or joint venture interest;

(B) the buying or selling of services;

(C) the loaning or borrowing of money or a preliminary commitment to that transaction; or

(D) any other transaction which is substantially similar in nature to those listed in this paragraph, excluding distributions mandated by 43 U.S.C. Sec. 1606(j), effective December 18, 1971;

(9) "last fiscal year" means the fiscal year of the corporation most recently completed before the date of the meeting for which proxies are to be solicited;

(10) "nominee" means a person who has consented to being named in a proxy statement and who has agreed to serve if elected;

(11) "participant"

(A) means the board and the corporation;

(B) means a nominee for whose election as director proxies are solicited;

(C) means a committee or group which solicits proxies or a member of the committee or group;

(D) means a person who finances, directly or indirectly, the solicitation of proxies, except a person who contributes not more than \$500 and who is not otherwise

a participant;

(E) means a person who solicits proxies;

(F) does not include

(i) a person or organization retained or employed by a participant to solicit shareholders whose activities are limited to the performance of his duties in the course of his employment;

(ii) a person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;

(iii) a person employed by a participant in the capacity of attorney, accountant, or as an advertising, public relations, or financial adviser, whose activities are limited to the performance of his duties in course of his employment; or

(iv) a person regularly employed as an officer or employee of a participant who is not otherwise a participant;

(12) "proxy" means a written authorization which may take the form of a consent, revocation of authority, or failure to act or dissent, signed by a shareholder or his attorney-in-fact and giving another person power to vote with respect to the shares of the shareholder;

(13) "proxyholder" means a person to whom a proxy or power of substitution is given;

(14) "proxy statement" means a letter, publication, press release, advertisement, radio/television script or tape, or other communication of any type which is made available to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy;

(15) "shareholder" means one who is the holder of record of a share in the corporation;

(16) "solicitation" means

(A) a request to execute or not to execute, or to revoke a proxy; or

(B) the distributing of a proxy or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. Eff. 1/4/81, Register 77; am 11/27/88, Register 108)

Authority AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.240

ARTICLE 4. "REGULATION D" REGISTRATION AND NOTICE PROCEDURE.

Section

- 500. Creation of classifications
- 501. Definitions specific to "Regulation D" procedure
- 502. Repealed
- 503. Registration and reporting of "Regulation D" offerings
- 504. Registration of Rule 504 offerings
- 505. Registration of Rule 505 offerings
- 506. Notice filing procedures for transactions of federal covered securities not involving public offerings
- 510. Integration requirements
- 515. Information requirements
- 520. Limitations on manner of offering
- 530. Disqualification
- 535. Limitation on sales expenses
- 540. Rescission of improvident sales

3 AAC 08.500. CREATION OF CLASSIFICATIONS. The following classifications of transactions in securities are created, to which 3 AAC 08.500 – 3 AAC 08.540 apply:

(1) an offering relying on "Regulation D" as adopted by the SEC in 17 C.F.R. 230 and 239;

(2) an offering relying on another federal regulation or statute and that otherwise meets the requirements of 3 AAC 08.500 – 3 AAC 08.540. (Eff. 5/24/84, Register 90; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.501. DEFINITIONS SPECIFIC TO "REGULATION D" PROCEDURE.

(a) As used in 3 AAC 08.500 – 3 AAC 08.540, the definitions of the following terms are contained in 17 C.F.R. 230.501, as revised as of October 1, 1999, and are adopted by reference:

- (1) "accredited investor;"
- (2) "affiliate;"
- (3) "aggregate offering price;"
- (4) "business combination;"
- (5) "calculation of number of purchasers;"
- (6) "executive officer;"
- (7) "issuer;"
- (8) "purchaser representative."

(b) Unless the context indicates otherwise, in 3 AAC 08.501 – 3 AAC 08.540,

(1) "closing a sale" means that transaction under which the offeror becomes legally bound to sell the securities

(2) repealed 4/19/2000, Register 154)

(3) "permitted Alaska purchaser" means a person who, at the time the person becomes a purchaser of the securities, comes within any of the following

categories or whom the issuer reasonably believes comes within any of the following:

(A) a natural person who purchases, in this state, at least \$10,000 of the securities being offered, if the purchaser's total purchase does not exceed five percent of the purchaser's net worth at the time of purchase; the purchase must be only for cash, marketable securities, or both; the net worth of the purchaser's spouse may be included for the purpose of this subparagraph;

(B) a natural person who had an individual income in excess of \$70,000 in each of the two most recent years and who reasonably expects an income in excess of \$70,000 in the current year, if the amount purchased in this state does not exceed 10 percent of the person's individual income for the most recent year; the purchase must be only for cash, marketable securities, or both; the income of a spouse may be included for the purpose of this subparagraph;

(C) a limited partnership, limited liability partnership, limited liability company, partnership, corporation, trust, or other entity in which each of the equity owners, or holders of beneficial interests in the case of a trust, satisfies the requirements of (A) or (B) of this paragraph, if the amount invested by the entity would be allowable as an individual purchase by each person under (A) or (B) of this paragraph..

(c) A person who is not a registered agent, a registered state investment adviser, or a federal covered adviser in compliance with AS 45.55.040(h) and who acts as a purchaser representative is not considered an agent, state investment adviser, or federal covered adviser if the activity as purchaser representative is merely an incidental part of the person's usual activities or occupation. (Eff. 5/24/84, Register 90; am 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.503. REGISTRATION AND REPORTING OF "REGULATION D" OFFERINGS. (a) An applicant registering under the provisions of 3 AAC 08.500 – 3 AAC 08.540 is only required to file the registration statement on State of Alaska Form 08-101, any items required by the registration statement, any items requested by the staff, and the fee required by in 3 AAC 08.920(a)(5). If additional documents, including the offering documents, are filed with the administrator, the administrator will treat the filing as an application for registration by qualification.

(b) Sales of an offering registered under 3 AAC 08.500 – 3 AAC 08.505 may be made only by a broker-dealer and salesperson registered under this chapter or by other persons exempted from registration by AS 45.55 or this chapter.

(c) Notwithstanding the requirements of (b) of this section, an issuer or sponsor of an issuer to be formed may register up to five salespersons as agents who are exempt from the examination requirement of 3 AAC 08.011(h)(2). To register an agent, the issuer or sponsor of an issuer must file an application for registration in accordance with 3 AAC 08.011(h)(1) and pay a fee in accordance with 3 AAC 08.015(a)(1)(B). A salesperson may not be registered to more than one person at a time without complying with the dual registration provisions of 3 AAC 08.010(e)-(f).

(d) The registrant shall, for three years after the closing of the offering, maintain and keep open for inspection by the administrator or his designee inside or outside of this state

(1) all offering materials;

(2) records relating to purchaser representatives used, and materials and

data relied upon to determine the qualifications of the purchaser representatives;

(3) records relating to purchasers, and materials and data relied upon to determine the qualifications of the purchasers;

(4) records relating to securities sales after the closing of the offering, that are considered as part of the offering; and

(5) all offering materials used in connection with offerings registered under 3 AAC 08.500 – 3 AAC 08.505.

(e) The administrator will, in the administrator's discretion, modify or waive any requirement in 3 AAC 08.500 – 3 AAC 08.540. An applicant for waiver must prove that the action requested is consistent with AS 45.55, and that the investors are otherwise adequately protected. (Eff. 5/24/84, Register 90; am 9/8/91, Register 119; am 10/1/99, Register 151)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.504. REGISTRATION OF RULE 504 OFFERINGS. (a) Offerings of securities not exceeding the greater of \$1,000,000 or the limit established under 17 C.F.R. 230.504(b)(2) (SEC Rule 504(b)(2)) may be registered as follows:

(1) an unlimited number of sophisticated or suitable purchasers may be involved;

(2) written offering documents providing full and adequate disclosure of material facts must be provided to each purchaser;

(3) advertising is not allowed without a waiver from the administrator under 3 AAC 08.520(b);

(4) the sum of the following amounts may not exceed the greater of \$1,000,000 or the limit established under 17 C.F.R. 230.504(b)(2):

(A) the dollar value for the amount of securities being registered;

(B) the aggregate offering price of all securities of the issuer sold within the 12 months before the effective date of the certificate of registration;

(C) the aggregate offering price of all securities of the issuer sold during the course of the offering being registered if the securities were sold in reliance on 15 U.S.C. 77c(b) (sec. 3(b) of the Securities Act of 1933) or in violation of 15 U.S.C. 77e(a) (sec. 5(a) of the Securities Act of 1933);

(5) provisions on offerings to sophisticated purchasers are as follows:

(A) the registration of an offering to sophisticated purchasers under this section allows sales to

(i) an accredited investor;

(ii) a permitted Alaska purchaser; or

(iii) a person, acting alone or with a purchaser

representative, who the issuer reasonably believes has the knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the proposed investment; the issuer's reasonable belief of the person's knowledge and experience must exist before a person becomes a purchaser;

(B) sales under this paragraph may be made by the issuer, a person registered in this state to sell for the issuer, a broker-dealer, or a person exempted from registration by AS 45.55 or this chapter;

(6) the registration of an offering to suitable purchasers under this section allows

(A) sales to be made only by a broker-dealer registered in this state who is also registered as a broker-dealer with the SEC under 15 U.S.C. 78o(b) (sec. 15(b) of the Securities Exchange Act of 1934);

(B) registration if the broker-dealer who will conduct the sales reasonably believes that adequate diligence and review have been applied in connection with the offering being registered in order for the broker-dealer to adequately determine the suitability of the offering to a purchaser; and

(C) sales if the broker-dealer reasonably believes that the security is suitable for the purchaser after reasonable inquiry concerning the purchaser's investment objectives, financial situation, and needs, and after consideration of any other information known by the broker-dealer.

(b) For purposes of this section, 17 C.F.R. 230.504(b)(2), as revised as of October 1, 1999, is adopted by reference. (Eff. 5/24/84, Register 90; am 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.505. REGISTRATION OF RULE 505 OFFERINGS. (a) Offerings of securities not exceeding the greater of \$5,000,000 or the limit established under 17 C.F.R. 230.505(b)(2)(i) (SEC Rule 505(b)(2)(i)) may be registered under this section, subject to the following:

(1) an unlimited number of accredited investors may be involved;

(2) the issuer must reasonably believe that, applying the provisions for "calculation of number of purchasers" in 17 C.F.R. 230.501, the number of purchasers, other than accredited investors, total no more than 35;

(3) sales may be made only to sophisticated or suitable purchasers as described in (b)-(c) of this section;

(4) the requirements of 3 AAC 08.515(a) and (c)-(f) apply to offerings registered under this section;

(5) advertising is not allowed without a waiver from the administrator under 3 AAC 08.520(b);

(6) the sum of the following amounts may not exceed the greater of \$5,000,000 or the limit established under 17 C.F.R. 230.505(b)(2)(i):

(A) the dollar value for the amount of securities being registered;

(B) the aggregate offering price of all securities of the issuer sold within the 12 months before the effective date of the certificate of registration;

(C) the aggregate offering price of all securities of the issuer sold during the course of the offering being registered if the securities were sold in reliance on 15 U.S.C. 77c(b) (sec. 3(b) of the Securities Act of 1933) or in violation of 15 U.S.C. 77e(a) (sec. 5(a) of the Securities Act of 1933).

(b) Provisions on offerings to sophisticated purchasers are as follows:

(1) the registration of an offering to sophisticated purchasers under this section allows sales to

(A) an accredited investor;

(B) a permitted Alaska purchaser; or

(C) a person, acting alone or with a purchaser representative, who the issuer reasonably believes has the knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the

proposed investment; the issuer's reasonable belief of the person's knowledge and experience must exist before a person becomes a purchaser;

(2) sales under this paragraph may be made by the issuer, a person registered in this state to sell for the issuer, a broker-dealer, or a person exempt from registration by AS 45.55 or this chapter.

(c) The registration of an offering to suitable purchasers under this section allows

(1) sales to be made only by a broker-dealer registered in this state who is also registered as a broker-dealer with the SEC under 15 U.S.C. 78o(b) (sec. 15(b) of the Securities Exchange Act of 1934);

(2) registration if the broker-dealer who will conduct the sales reasonably believes that adequate diligence and review have been applied in connection with the offering being registered in order for the broker-dealer to adequately determine the suitability of the offering to a purchaser; and

(3) sales if the broker-dealer reasonably believes that the security is suitable for the purchaser after reasonable inquiry concerning the purchaser's investment objectives, financial situation, and needs, and after consideration of any other information known by the broker-dealer.

(d) For purposes of this section, 17 C.F.R. 230.505(b)(2)(i), as revised as of October 1, 1999, is adopted by reference. (Eff. 5/24/84, Register 90; am 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.506. NOTICE FILING PROCEDURES FOR TRANSACTIONS OF FEDERAL COVERED SECURITIES NOT INVOLVING PUBLIC OFFERINGS. (a) An issuer offering a federal covered security in a transaction that is not a public offering for the purposes of 15 U.S.C. 77d(2) and 15 U.S.C. 77r(b)(4)(D) (secs. 4(2) and 18(b)(4)(D) of the Securities Act of 1933) shall file with the administrator no later than 15 days after the first sale of that federal covered security in this state

(1) a notice on SEC Form D, including Part E and the Appendix, or on any successor form adopted by the SEC; and

(2) a nonrefundable notice filing fee as provided in 3 AAC 08.920(a)(3).

(b) A notice filing under this section is effective

(1) only if the administrator receives each item required by (a) of this section; and

(2) on the date that the administrator receives the last of the items required by (a) of this section.

(c) After receipt of the items required (a) of this section, the administrator will issue a certificate of notice as of the date of receipt of those items. Sales may occur before the effective date of the notice filing under this section.

(d) A notice filing under this section is valid for one year from the effective date established under (b) of this section, or for two years from that date if, when submitting the items required under (a) of this section, the issuer paid the fee required by 3 AAC 08.920(a)(3) for an automatic extension. To renew a notice, the issuer must submit the items required by (a) of this section, as if the issuer were making an initial filing. (Eff. 5/24/84, Register 90; am 4/19/2000, Register 154)

Authority: AS 45.55.075

AS 45.55.950

3 AAC 08.510. INTEGRATION REQUIREMENTS. (a) All separate sales of securities by an issuer that are a part of the same offering registered under 3 AAC 08.501 – 3 AAC 08.505, or noticed under 3 AAC 08.506 are included as securities sold under the same offering, except as otherwise provided in this section.

(b) In determining whether to treat separate sales of securities inside or outside of this state as part of the same offering, the administrator will consider whether the sales

- (1) are part of a single plan of financing;
- (2) involve issuance of the same class of security;
- (3) are made at or about the same time;
- (4) are made for the same type of consideration; and
- (5) are made for the same general purpose.

(c) A sale of securities made more than six months before the effective date of registration under 3 AAC 08.501 – 3 AAC 08.505, or of notice under 3 AAC 08.506, or more than six months after the termination of the offering, is not included as a sale made as part of the same offering under this section if sales of securities of the same or similar class by the issuer do not occur during either six-month period. For purposes of this subsection,

(1) the effective date of a registration under 3 AAC 08.504 or 3 AAC 08.505 is the date a registrant is authorized to sell securities under a certificate of registration issued by the administrator;

(2) the effective date of a notice under 3 AAC 08.506 is the date established under 3 AAC 08.506(b);

(3) the termination date of the offering under 3 AAC 08.504, 3 AAC 08.505, or 3 AAC 08.506 is the earlier of the

(A) expiration date of a certificate of registration in the case of an offering under 3 AAC 08.504 or 3 AAC 08.505, or a certificate of notice in the case of an offering under 3 AAC 08.506; or

(B) date of last sale of securities.

(d) An offering of an interest in a partnership is not included as a security sold under the same offering under 3 AAC 08.504 or 3 AAC 08.506, even if a common sponsor or affiliate is involved in an offering of interest in another entity, if the following conditions are satisfied:

(1) the partnership

(A) must be a separate legal entity;

(B) must maintain separate books and records; and

(C) may not commingle funds of the partnership with those of the sponsor or any other entity having the same sponsor;

(2) the partnership, at the time the interests are sold, must have an independent opportunity to meet its primary investment objective; for purposes of this paragraph, the partnership does not have an independent opportunity to meet its primary investment objective if the partnership is substantially dependent on the creation, continued existence, or economic results of investments of another entity having a common sponsor;

(3) a material portion of the gross offering proceeds of the partnership may not be invested in properties where another entity having a common sponsor has also invested, and continues to hold invested, a material portion of the other entity's gross offering proceeds;

(4) an offering that does not identify at least 50 percent of the assets in which the partnership intends to invest does not qualify under this subsection if

(A) another entity with a common sponsor was formed to conduct the same general type of activity and that entity has not invested or committed the major portion of that entity's gross offering price before commencement of this offering by the registering partnership; or

(B) the sponsor creates a simultaneous or subsequent offering through another entity to conduct the same general type of activity before the registering partnership has invested or committed for investment the major portion of the partnership's gross offering proceeds; this subparagraph does not apply if the investment to be made by the other entity is fully identified;

(5) an offering of interests in a partnership that is formed to engage in sale and leaseback transactions does not qualify under this subsection if the ultimate intended lessee of the assets in which the partnership invests is a sponsor of the partnership.

(e) A person may request an order from the administrator as to whether a transaction is exempt, under (b), (c), or (d) of this section, from treatment under (a) of this section as a sale under the same offering. To make that request, a person must file it with the person's application for registration, setting out arguments and citations in support of the request. For registrations under 3 AAC 08.504 and 3 AAC 08.505, and upon receipt of a properly filed request, the administrator will include with the certificate of registration an order as to whether separate sales will be integrated under this section.

(f) If, under (e) of this section, a person requests an order for an exemption under (c) or (d) of this section, but not for an exemption under (b) of this section, an order that an exemption is unavailable under (c) or (d) of this section does not raise a presumption of integration under (b) of this section.

(g) Offers and sales of securities under an employee benefit plan, as defined by 17 C.F.R. 230.405, are not included under (a) of this section for purposes of integration. For purposes of this subsection, the definition of "employee benefit plan" in 17 C.F.R. 230.405, as revised as of October 1, 1999, is adopted by reference.

(h) In this section,

(1) "partnership"

(A) includes a general partnership, limited partnership, limited liability partnership, joint venture, or other similar entity; and

(B) means a partnership existing on May 24, 1984 or formed on or after that date;

(2) "sponsor"

(A) means a promoter or person directly or indirectly instrumental in organizing the entity wholly or in part, or a person who manages or participates in the management of the partnership;

(B) includes a general partner and affiliate of the sponsor; and
(C) does not include an independent third party whose only compensation is for professional services rendered in connection with the offering of interests in the partnership; for purposes of this subparagraph, "independent third party" includes an attorney, accountant, or underwriter. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.515. INFORMATION REQUIREMENTS. (a) The provisions of 3 AAC 08.501 – 3 AAC 08.540 do not relieve a person from compliance with the statutory requirements of AS 45.55 for full and adequate disclosures of material items.

(b) If an offering is registered under 3 AAC 08.504, written disclosures must be provided in connection with all offers and sales as required under (a)(2) of that section.

(c) If an offering is registered under 3 AAC 08.505, the offeror must provide full and adequate disclosure of all matters material to an understanding of the issuer, the issuer's business, and the securities being offered. Disclosures must

(1) provide each prospective purchaser with at least the type of information and documentation required by 17 C.F.R. 230.502(b)(2); for purposes of this paragraph, 17 C.F.R. 230.502(b)(2), as revised as of October 1, 1999, is adopted by reference;

(2) include a procedure for a prospective purchaser to ask questions and receive answers concerning the terms of the offering and to obtain any additional information that

(A) the issuer possesses or can acquire through reasonable effort or expense; and

(B) is necessary to verify the accuracy of information provided under this section; and

(3) include a procedure for a prospective purchaser who is not an accredited investor to obtain a brief written description of any written information concerning the offering that is provided by the issuer to any accredited investor; failure by a purchaser to request the information does not constitute a waiver of the issuer's statutory obligation to provide full and complete disclosure; for purposes of this paragraph, a prospective purchaser includes a permitted Alaska purchaser.

(d) Notwithstanding (c) of this section, if an offering is registered under 3 AAC 08.505 and is restricted to accredited investors, full and adequate disclosure of material items does not require disclosure of specific information or a specific method of providing disclosure.

(e) A disclosure required by this section must be provided to a person before that person purchases the securities.

(f) If written information is provided to a prospective permitted Alaska purchaser, the offering materials must contain the following legend, which must be set out in a prominent place:

"IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

"THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

"THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY

BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.” (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.520. LIMITATIONS ON MANNER OF OFFERING. (a) An issuer or person acting on behalf of an issuer may not offer or sell securities registered under 3 AAC 08.500 – 3 AAC 08.540 by general solicitation or general advertising. For purposes of this subsection, general solicitation or general advertising includes

(1) an advertisement, article, notice, or other communication published in a newspaper, magazine, or similar medium, or broadcast over television or radio; and

(2) a seminar or meeting to which attendees are invited by general solicitation or general advertising.

(b) The administrator will, in the administrator’s discretion, waive or conditionally waive the provisions of (a) of this section. To request a waiver, the registrant must

(1) file a request for waiver;

(2) provide the advertising materials or an adequate description of the advertising materials and identify the media that will be used;

(3) state the reasons for requesting the waiver and show that purchasers are otherwise protected; and

(4) provide an attorney’s opinion that the proposed use of the advertising will not invalidate the offering under the laws or regulations of any federal or state regulatory agencies having securities jurisdiction over the offering. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.530. DISQUALIFICATION. (a) A person who is disqualified from using an exemption under 17 C.F.R. 230.504 or 17 C.F.R. 230.505 is also disqualified from registering under 3 AAC 08.504 or 3 AAC 08.505, respectively.

(b) The administrator will, in the administrator’s discretion, deny registration under 3 AAC 08.500 – 3 AAC 08.540 if a person described in 17 C.F.R. 230.262(a), (b), or (c)

(1) meets any of the disqualification provisions of 17 C.F.R. 230.262 applicable to that person;

(2) has filed a registration statement that is the subject of a currently effective stop order entered by a state within five years before the registration of the offering;

(3) within the 10 years preceding the filing of the registration, has been convicted of

(A) a felony or misdemeanor in connection with the purchase or sale of a security or involving a false filing with a state; or

(B) a felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, and conspiracy to defraud; or

(4) has been subject to a state administrative or court order or judgment, including an injunction, entered within the five years preceding the filing of the registration, if a violation of a state banking, insurance, real estate, or securities law is the grounds for the order or judgment.

(c) A disqualification under (b)(2)-(4) of this section does not apply if the person subject to the disqualifying order is licensed to conduct securities-related business in the state in which the order or judgment was entered.

(d) A disqualification under (b)(2)-(4) of this subsection is automatically waived if the state that created the basis for disqualification waives the disqualification.

(e) The administrator will review the representations in each registration to determine whether registration should be denied under (b) of this section. The administrator will, in the administrator's discretion, allow the registration upon a showing that allowing the registration is in the public interest and that safeguards have been provided for that offering.

(f) For purposes of this section, 17 C.F.R. 230.262, as revised as of October 1, 1999, is adopted by reference. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.535. LIMITATION ON SALES EXPENSES. (a) Expenses of an offering registered under 3 AAC 08.504 or 3 AAC 08.505, including sales expenses, acquisition expenses, expenses for preparing the offering, and other similar expenses, must be reasonable after taking into account the nature of the offering, the amount to be raised by the offering, and the proposed use of the money.

(b) If the proposed business of the issuer requires a minimum amount of proceeds to commence or continue the business in the manner proposed, those proceeds are subject to impoundment as provided under 3 AAC 08.190. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.540. RESCISSION OF IMPROVIDENT SALES. (a) The improvident closing of a sale of securities in violation of a provision of 3 AAC 08.500 – 3 AAC 08.505 does not by itself invalidate the registration of the securities if the registrant

(1) seeks an appropriate amendment to the registration with the administrator, provides full details of the transaction, demonstrates that the registrant and the person acting on behalf of the registrant who sold the security acted in good faith, demonstrates that the sale was made without an intent to violate the provisions of this section, and receives an amended order authorizing the proposed transaction;

(2) cancels the sale or provides rescission to the purchaser involved within a reasonable time after discovery; or

(3) either

(A) cancels the sale or provides rescission before release of proceeds held in escrow under AS 45.55.110 and 3 AAC 08.180 – 3 AAC 08.186; or

(B) has the financial capacity to pay and offers to or does provide the rescission payment out of separate funds, if the payment does not create additional risks or obligations to the remaining purchasers or the project for which the money was raised.

(b) Regardless of whether a registrant cancels a sale or provides rescission under this section to a purchaser who is counted as a purchaser in a "calculation of number of purchasers" under 17 C.F.R. 230.501, the registrant may not omit that

purchaser from the "calculation of number of purchasers" for purposes of meeting the requirements of 3 AAC 08.505(a)(2).

(c) A rescission payment or payment date may not be made subject to resale of the interest to be cancelled.

(d) This section applies to the registrant and any other person who is responsible for the sale of security and subject to the requirements of AS 45.55 and this chapter.

(e) A rescission payment under this section must be made without condition, and the person offering the rescission must have the financial capacity to pay.

(f) If the rescission creates additional risks or obligations for the remaining purchasers who do not accept rescission under (a) of this section, those risks and obligations must be disclosed.

(g) This section does not relieve a person from compliance with other federal or state law. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

ARTICLE 5. SMALL CORPORATE OFFERING REGISTRATION (SCOR) PROCEDURE.

Section

- 600. General provisions relating to small corporate offerings
- 610. Qualifications for small corporate offerings
- 620. Disqualification of small corporate offerings
- 630. Filing requirements for small corporate offerings
- 640. Registration and reporting for small corporate offerings
- 650. Escrow, lock-in, and impound provisions for small corporate offerings

3 AAC 08.600. GENERAL PROVISIONS RELATING TO SMALL CORPORATE OFFERINGS. (a) As an alternative to a registration procedure under this chapter, a corporation or limited liability company issuing securities that are exempt from registration with the SEC under either 17 C.F.R. 230.251 – 17 C.F.R. 230.263 (Regulation A) or 17 C.F.R. 230.501 – 17 C.F.R. 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D), may use the NASAA registration Form U-7, or its successor, as the disclosure document for the offering.

(b) The administrator will, in the administrator's discretion, for good cause shown, waive or modify a requirement of 3 AAC 08.600 – 3 AAC 08.650.

(c) The administrator will, in the administrator's discretion, apply a provision of 3 AAC 08.080 – 3 AAC 08.230 to offerings under 3 AAC 08.600 – 3 AAC 08.650, if the administrator determines that application of that provision is necessary for the protection of investors. (Eff. 9/18/91, Register 119; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.610. QUALIFICATIONS FOR SMALL CORPORATE OFFERINGS.

(a) An applicant may use NASAA Form U-7, or its successor if

(1) the corporation or limited liability company relies upon and meets the requirements of either 17 C.F.R. 230.251 – 17 C.F.R. 230.263 (Regulation A), or 17 C.F.R. 230.501 – 17 C.F.R. 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D), and engages in or proposes to engage in a business other than petroleum exploration or production, mining, or other extractive industry;

(2) the offering describes the specific business, properties and use of all proceeds; blind pool offerings are ineligible;

(3) the securities are offered and sold only on behalf of the issuer; however, a selling security-holder, including a purchasing underwriter in a firm commitment underwriting or an affiliate of the issuer, may use NASAA Form U-7, or its successor, to register the securities for resale, if

(A) for an offering or sale made in reliance upon

(i) 17 C.F.R. 230.251 – 17 C.F.R. 230.262 (Regulation A), those regulations permit resale by the selling security-holder; or

(ii) 17 C.F.R. 230.501 – 17 C.F.R. 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D), those regulations permit resale by the selling security-holder;

(B) the issuer specifically requests that the administrator waive the restriction in this paragraph; and

(C) the administrator grants the waiver request made under (B) of this paragraph;

(4) the offering price for common stock, the exercise price for options, warrants or rights for common stock, or the conversion price for securities that are convertible into common stock is equal to or greater than \$1 per share;

(5) the issuer does not split the issuer's common stock or declare a stock dividend for two years after the effective date of the registration without the written consent of the administrator;

(6) commissions, fees, or other remuneration for soliciting a prospective purchaser in this state in connection with an offering made under 3 AAC 08.600 – 3 AAC 08.650 are paid only to persons who the issuer reasonably believes are registered under AS 45.55.030, if required;

(7) the aggregate offering price of the securities within or outside this state does not exceed the greater of

(A) \$1,000,000;

(B) the amount allowed under 17 C.F.R. 230.251(b), for an offering or sale made in reliance upon 17 C.F.R. 230.251 – 230.263 (Regulation A); or

(C) the amount allowed under 17 C.F.R. 230.504(b)(2), for an offering or sale made in reliance upon 17 C.F.R. 230.501 - 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D); however, NASAA Form U-7, or its successor, is not available to an issuer that is subject to the reporting requirements of 15 U.S.C. 78m and 15 U.S.C. 78o-5 (secs. 13 and 15C of the Securities Act of 1934);

(8) the issuer files with the

(A) SEC an

(i) SEC Form 1-A, or its successor, claiming exemption of the offering from registration under 17 C.F.R. 230.251, and also files other documents that the SEC requires to be filed under 17 C.F.R. 230.252; or

(ii) SEC Form D, or its successor, claiming exemption of the offering from registration under 17 C.F.R. 230.504; and

(B) administrator a copy of the materials filed under (A) of this paragraph, with appropriate state signature pages, at the same time that those materials are filed with the SEC; and

(9) for registration of debt offerings, the issuer demonstrates a reasonable ability to service its debt.

(b) For purposes of this section, 17 C.F.R. 230.251(b) and 17 C.F.R. 230.504(b)(2), as revised as of October 1, 1999, are adopted by reference.

(c) In this section, "aggregate offering price" has the meaning given in 17 C.F.R. 230.501(c). For purposes of this section, 17 C.F.R. 230.501(c), as revised as of October 1, 1999, is adopted by reference. (Eff. 9/18/91, Register 119; am 10/1/99, Register 151; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.620. DISQUALIFICATION OF SMALL CORPORATE OFFERINGS.

(a) An issuer may not use NASAA Form U-7, or its successor, if the issuer, a beneficial owner of 10 percent or more of a class of the issuer's equity securities, an officer, director, or promoter of the issuer, a selling agent of the securities to be offered, or an officer, director, or partner of that selling agent

(1) files a registration statement that is the subject of a currently effective registration stop order entered under a federal or state securities law within the five years before the filing of the registration application;

(2) was convicted, within five years before the filing of the application for registration, of

(A) a misdemeanor in connection with the offer, purchase, or sale of a security; or

(B) a felony;

(3) is currently subject to a federal or state administrative enforcement order or judgment, entered within five years before the filing of the application for registration, and

(A) entered by a state's securities administrator or the SEC; or

(B) in which fraud or deceit was found; for purposes of this subparagraph, fraud and deceit include the making of untrue statements of material facts or omitting to state material facts;

(4) is subject to a state administrative enforcement order or judgment that prohibits, denies, or revokes the use of an exemption for registration in connection with the offer, purchase, or sale of securities;

(5) is currently subject to a court order, judgment, or decree, entered within five years before the filing of the application for registration, and

(A) temporarily, preliminarily, or permanently restraining or enjoining that person from engaging in or continuing a conduct or practice in connection with the purchase or sale of a security; or

(B) involving the making of a false filing with a state or with the SEC, entered within five years before the filing of the application for registration.

(b) The disqualifications under (a)(1)-(3) and (a)(5) of this section do not apply if

(1) the person subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered, or if the broker-dealer employing that person is licensed or registered in this state and the SEC Form BD, or its successor, filed with the administrator discloses the order, conviction, judgment, or decree; and

(2) the person acts only in the capacity for which the person is licensed or registered.

(c) A disqualification under (a) of this section does not apply if the agency that created the basis for the disqualification determines upon a showing of good cause that, within the agency's jurisdiction, a prohibition on the use of NASAA Form U-7, or its successor, is not necessary.

(d) If any of the circumstances set out in (a)(1)-(3) or (a)(5) of this section occurred more than five years before the date of the application for registration, the circumstances must be described on NASAA Form U-7, or its successor, as a miscellaneous factor. (Eff. 9/18/91, Register 119; am 4/19/2000, Register 154)

Authority: AS 45.55.110

AS 45.55.950

3 AAC 08.630. FILING REQUIREMENTS FOR SMALL CORPORATE OFFERINGS. In addition to filing a properly completed and signed NASAA Form U-7, or its successor, an issuer who seeks registration under 3 AAC 08.600 – 3 AAC 08.650 must file with the administrator a NASAA Form U-1, Uniform Application to Register

Securities, or its successor. References in the NASAA Form U-1, or its successor, to SEC registration and effectiveness and Questions 6 and 8(a) of the form are inapplicable. The following documents must be filed as exhibits to the NASAA Form U-1, or its successor:

- (1) a representative form of the selling agency agreements;
 - (2) a copy of
 - (A) the issuer's
 - (i) articles of incorporation, if the issuer is a corporation; or
 - (ii) other charter documents, for an issuer other than a corporation; and
 - (B) any amendment to a document listed in (A) of this paragraph;
 - (3) a copy of the issuer's bylaws, as most recently amended;
 - (4) a copy of any resolutions by directors setting out the terms and provisions of capital stock or ownership interests to be issued;
 - (5) a copy of any indenture, note, or other contractual provision for debt, or of any options, warrants, or rights to be offered;
 - (6) a specimen of the security to be offered, including any legend restricting resale;
 - (7) a NASAA Form U-2 (Consent to Service of Process), and an appropriate NASAA Form U-2A (Corporate Resolution), or successors to those forms;
 - (8) copies of all advertising or other materials directed at or to be furnished to investors in the offering;
 - (9) a form of escrow agreement for the escrow of proceeds of the offering;
 - (10) a consent to inclusion in the disclosure document of an accountant's report;
 - (11) a consent to inclusion in the disclosure document of a tax advisor's opinion or description of tax consequences;
 - (12) a consent to inclusion in the disclosure document of an evaluation by an attorney of litigation or administrative action;
 - (13) a copy of any subscription agreement forms for the purchase of securities in the offering;
 - (14) an opinion of an attorney, licensed to practice in a state or territory of the United States, that the securities to be sold in the offering have been authorized and, when issued upon payment of the offering price, will be legally and validly issued, fully paid, and nonassessable and binding on the issuer in accordance with their terms;
 - (15) a list of the resident street addresses of promoters of the issuer;
 - (16) a copy of any work sheet showing computations for responses to Questions 5, 6, 7(a), 8(a), 8(b), 17(a), 37, 38, 41(a), and 41(b) of NASAA Form U-7, or its successor. (Eff. 9/18/91, Register 119; am 4/19/2000, Register 154)
- Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.640. REGISTRATION AND REPORTING FOR SMALL CORPORATE OFFERINGS. (a) The issuer shall pay a registration and filing fee as provided in 3 AAC 08.920(a)(5) for the registration of the offering under NASAA Form U-7.

(b) An issuer may register up to five salespersons as agents of the issuer who are exempt from the examination requirement of 3 AAC 08.011(h)(2). To register an agent, the issuer must file an application for registration in accordance with 3 AAC 08.011(h)(1) and pay a fee in accordance with 3 AAC 08.015(a)(1)(B). A salesperson

may not be registered to more than one issuer at a time without compliance with the dual registration provisions of 3 AAC 08.010(e)-(f).

(c) For three years after the close of the offering, the issuer shall maintain and keep open for inspection by the administrator all

(1) offering materials;

(2) records relating to purchasers; and

(3) records relating to securities sales following the close of the offering that are considered as part of the offering. (Eff. 9/18/91, Register 119; am 10/1/99, Register 151)

Authority: AS 45.55.110 AS 45.55.915 AS 45.55.950

3 AAC 08.650. ESCROW, LOCK-IN, AND IMPOUND PROVISIONS. (a)

Promotional shares in an offering under 3 AAC 08.600 – 3 AAC 08.640 are subject to the escrow and lock-in requirements of 3 AAC 08.180 – 3 AAC 08.186.

(b) If the proposed business of the issuer requires a minimum amount of proceeds to commence or continue the business in the manner proposed, impoundment of the sale proceeds are subject to the requirements of 3 AAC 08.190. (Eff. 9/18/91, Register 119; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

ARTICLE 6. VIATICAL SETTLEMENT INTERESTS.

Section

- 700. Viatical settlement interests as securities
- 705. Scope of viatical settlement requirements
- 710. Registration requirements for viatical settlement interests
- 715. Effective date for registration of viatical settlement interests
- 720. Right of rescission applicable to sales of viatical settlement interests
- 725. Sales agents
- 730. Waiver of viatical settlement requirements
- 740. Privacy

3 AAC 08.700. VIATICAL SETTLEMENT INTERESTS AS SECURITIES. An investment contract known as a viatical settlement interest is a security that is subject to AS 45.55 and this chapter. (Eff. 4/20/2000, Register 154)

Authority: AS 45.55.070 AS 45.55.950 AS 45.55.990

3 AAC 08.705. SCOPE OF VIATICAL SETTLEMENT REQUIREMENTS. The provisions of 3 AAC 08.700 – 3 AAC 08.740

(1) set out the registration requirements, requirements for renewal of registration, fees, effective dates, and related matters for a viatical settlement interest; and

(2) do not

(A) provide an exemption from the fraud provisions of AS 45.55.010 – 45.55.028, or from another fraud provision of AS 45.55 or this chapter;

(B) relieve broker-dealers or agents from compliance with AS 45.55.010 – 45.55.060 or 3 AAC 08.005 – 3 AAC 08.065; or

(C) prohibit an issuer from using the registration procedures in AS 45.55 and this chapter or from claiming an exemption available under AS 45.55.900.(Eff. 4/20/2000, Register 154)

Authority: AS 45.55.070 AS 45.55.027 AS 45.55.950
AS 45.55.025 AS 45.55.028

3 AAC 08.710. REGISTRATION REQUIREMENTS FOR VIATICAL SETTLEMENT INTERESTS. (a) Under 3 AAC 08.700 – 3 AAC 08.740, an offer or sale of a viatical settlement interest, or of a security that represents or is secured by a viatical settlement interest, may be registered if

(1) a person listed in (b) of this section is not subject to a disqualification set out in (1)-(4) of that subsection;

(2) a registration statement on State of Alaska Form 08-102, the fee established in 3 AAC 08.920(a)(10), and the consent to service of process required by AS 45.55.980(g) are filed with the administrator; the registration statement must include

(A) the name, address, and telephone number of the issuer and a brief description of the general character and location of the issuer's business;

(B) a statement demonstrating eligibility for registration under (7) of this subsection and (b) of this section;

(C) a description of the security being offered or sold,

- (i) including a general description of the program offered by the issuer; and
 - (ii) not including details of specific viatical policies or viatical settlement contracts; and
- (D) a description of the kind and amount of commissions, finders' fees, or other remuneration paid directly or indirectly in connection with soliciting a sale of a viatical settlement interest in this state;
- (3) the following items are filed along with the registration statement:
 - (A) any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of the security;
 - (B) the issuer's most recent audited income and expense statement and balance sheet; as part of the information required under (5) of this subsection, the issuer must inform a prospective viatical settlement purchaser of the availability of those documents; a prospective viatical settlement purchaser may obtain copies upon written request to the administrator;
 - (C) information to be furnished under (5) of this subsection to a prospective individual viatical settlement purchaser;
 - (D) other information or documents as the administrator by order requires;
- (4) the offer or sale is made by, and commissions or other remuneration in connection with making the sale are made only to, persons registered or required to be registered under AS 45.55.030(a) or (c) and AS 45.55.040;
- (5) before a sale, each prospective individual viatical settlement purchaser is furnished written information that is sufficient to make an informed investment decision; for purposes of this paragraph,
 - (A) information that is sufficient to make an informed investment decision includes the
 - (i) viatical settlement disclosure document developed by the administrator and available on State of Alaska Form 08-114, Part A; the issuer must provide in that document an address to which a notice of rescission may be sent under 3 AAC 08.720; and
 - (ii) disclosure of any significant factors that may affect the outcome of the investment; and
 - (B) a sale occurs when the viatical settlement purchaser executes and the seller, or its representative, accepts the viatical settlement purchase agreement;
- (6) on or before the date when the viatical settlement provider identifies and presents to the viatical settlement purchaser an acceptable, specific viatical contract under the executed viatical settlement purchase agreement, an individual viatical settlement purchaser receives a viatical settlement disclosure document that the issuer has completed using State of Alaska Form 08-114, Part B; and
- (7) the issuer and the issuer's predecessors have been in continuous operation for at least three years without a default during the current fiscal year or within the two preceding fiscal years in the payment of principal, interest, dividends, or other obligations on a security of the issuer or a predecessor of the issuer with a fixed maturity or a fixed interest, dividend, or other provision.

(b) Registration under 3 AAC 08.700 – 3 AAC 08.740 is not available to an issuer if the issuer, a predecessor of the issuer, an affiliate of the issuer, a director of the issuer, an officer of the issuer, a general partner of the issuer, a beneficial owner of 10 percent or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, a partner of an underwriter of the securities to be offered, a director of an underwriter of the securities to be offered, or an officer of the underwriter of the securities to be offered

(1) has filed within the last five years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the SEC;

(2) within the last five years has been convicted of

(A) a felony;

(B) a criminal offense involving fraud or deceit; or

(C) a criminal offense in connection with the offer, purchase, or sale of a security;

(3) is currently subject to a state or federal administrative enforcement order or judgment entered within the last five years finding fraud or deceit in connection with the purchase or sale of a security; or

(4) is currently subject to an order, judgment, or decree of a court of competent jurisdiction entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining the person subject to the order from engaging in or continuing to engage in conduct or a practice involving fraud or deceit in connection with the purchase or sale of a security. (Eff. 4/20/2000, Register 154)

Authority: AS 45.55.070 AS 45.55.150 AS 45.55.950
AS 45.55.110

3 AAC 08.715. EFFECTIVE DATE AND EXPIRATION DATE FOR REGISTRATION OF VIATICAL SETTLEMENT INTERESTS. The effective date of a registration under 3 AAC 08.700 – 3 AAC 08.740 is the date a registrant is authorized to sell securities under a certificate of registration issued by the administrator. A certificate of registration issued under 3 AAC 08.700 – 3 AAC 08.740 expires one year after the effective date. (Eff. 4/20/2000, Register 154)

Authority: AS 45.55.070 AS 45.55.110 AS 45.55.950

3 AAC 08.720. RIGHT OF RESCISSION APPLICABLE TO SALES OF VIATICAL SETTLEMENT INTERESTS. (a) The issuer of a viatical settlement interest or a security that represents or is secured by a viatical settlement interest shall provide the viatical settlement purchaser an opportunity to rescind the purchase. The issuer shall provide the viatical settlement purchaser 10 business days after execution of the viatical settlement purchase agreement to submit personally or mail a written notice of rescission to the address designated in the disclosure document required under 3 AAC 08.710(a)(5)(A)(i).

(b) The notice of rescission required under (a) of this section is sufficient if addressed to the entity designated for the notice at the address given in the disclosure statement required under 3 AAC 08.710(a)(5)(A)(i). The rescission notice is effective on the date that it is mailed or the date that it is received, whichever is earlier. The

rescission notice may be in any form that expresses the intention of a purchaser to rescind the transaction.

(c) Within 90 days after the execution of the viatical settlement purchase agreement, the issuer shall provide the viatical settlement purchaser with a rescission offer using State of Alaska Form 08-118, if within that period the issuer has not identified a viatical settlement contract acceptable to and suitable for the viatical settlement purchaser and closed the transaction. The viatical settlement purchaser may accept the rescission offer within 10 business days after receiving it. The issuer shall keep a record of the rescission offer and its acceptance or rejection for at least three years after providing that offer, and shall provide that record to the administrator at the administrator's request.

(d) In this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday. (Eff. 4/20/2000, Register 154)

Authority: AS 45.55.070 AS 45.55.120 AS 45.55.950

3 AAC 08.725. SALES AGENTS. In addition to meeting other requirements for agents under AS 45.55 and this chapter, a sales agent who is registered to sell viatical settlement interests shall

(1) clearly and affirmatively disclose the nature of the return or the duration of time to obtain the return of any investment related to one or more viatical settlements sold by a viatical settlement provider or other seller whom the agent represents; and

(2) provide the disclosure documents required under 3 AAC 08.710(a)(5)-(6) to the purchaser in a timely manner. (Eff. 4/20/2000, Register 154)

Authority: AS 45.55.030 AS 45.55.040 AS 45.55.950

3 AAC 08.730. WAIVER OF VIATICAL SETTLEMENT REQUIREMENTS. Upon the request of an issuer, the administrator will, in the administrator's discretion, waive a requirement of 3 AAC 08.710 – 3 AAC 08.725 by order if the administrator determines the waiver to be in the public interest and that the requirement to be waived is not necessary for protection of investors. The issuer bears the burden of proof to satisfy the administrator that the waiver is in the public interest and that the requirement to be waived is not necessary for protection of investors. (Eff. 4/20/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.740. PRIVACY. Except as required for the administrator to execute the administrator's responsibilities under AS 45.55 or this chapter, an issuer of a viatical settlement interest may not disclose to another person the identity of the viator or insured of the insurance policy that is the subject of the viatical settlement interest. The viator may waive this prohibition against disclosure if the waiver is in writing and signed by the viator. (Eff. 4/20/2000, Register 154)

Authority: AS 45.55.950

ARTICLE 7. GENERAL PROVISIONS.

Section

- 900. Advertising and sales literature
- 910. Exemptions
- 915. Rescission of illicit sales
- 920. Filing, fees and forms
- 930. Hearings
- 945. Electronic signatures
- 950. Definitions

3 AAC 08.900. ADVERTISING AND SALES LITERATURE. (a) Except as provided in (c) of this section, an advertisement to be used or circulated in connection with the sale and promotion of a public offering of securities is subject to the following requirements and restrictions:

(1) at least five days before the intended use or dissemination of the advertisement, the applicant shall file with the administrator one copy of the proposed material;

(2) the use of the material is permitted if not disallowed by the administrator by written notice or otherwise within five days from the date filed;

(3) the administrator will not issue formal approval of the literature, and the user is responsible for determining the accuracy and reliability of the statements and material to be used in conformity with this section.

(b) The use of any of the following devices or sales presentations constitutes a deceptive or misleading practice:

(1) comparison charts or graphs showing a distorted, unfair, or unrealistic relationship between the issuer's past performance, progress, or success and that of another company, business, industry, or investment medium;

(2) the use of the layout format, size, kind, and color of type to attract attention to favorable or incomplete portions of the advertising matter, or to minimize less favorable, modified, or modifying portions necessary to make the entire advertisement a fair and truthful representation;

(3) statements or representations that

(A) by themselves predict future profit, success, appreciation, or performance, or that otherwise relate to the merit or potential of the securities;

(B) are positive or imperative in form; and

(C) fail to clearly indicate that they represent solely the opinion of the publisher or author;

(4) generalized conclusions, opinions, representations, or statements based upon a particular set of facts and circumstances, unless those facts and circumstances are stated and modified or explained by those additional facts or circumstances as are necessary to make the entire advertisement AS 45.55.110(g) a full, fair, and truthful representation;

(5) sales kits or film clips, displays, or exposures that, alone or by sequence and progressive compilation, tend to present to the prospective purchaser a cumulative or composite picture or impression of certain or exaggerated potential, profit,

safety, or returns, or of an assured or extraordinary investment opportunity or similar benefit;

(6) distribution, by words, pictures, charts, graphs, or other means, of nonfactual or inaccurate data, or of material based upon conjectural, unfounded, extravagant, or flamboyant claims, assertions, or predictions, or upon excessive optimism;

(7) a package or bonus deal, prize, gift, gimmick, or similar inducement, combined with or dependent upon the sale of some other product, contract, or service, unless that unit or combination has been fully disclosed and specifically described and identified in the application as the security being offered.

(8) performance figures or charts in marketing investment advisory services, unless the figures or charts comply with the Performance Presentation Standards (PPS) or the Global Investment Performance Standards (GIPS) of the Association for Investment Management and Research (AIMR); the Performance Presentation Standards (PPS) as revised as of February 12, 1999 or the Global Investment Performance Standards (GIPS) as revised as of April 14, 1999 are adopted by reference; this paragraph does not apply to individual account performance reports intended for use only by the individual client in assessing the individual's account;

(9) performance figures or charts not verified by an independent member of the Association for Investment Management and Research (AIMR) if the performance figures or charts are intended for an individual; this paragraph does not apply to individual account performance reports intended for use only by the individual client in assessing the individual's account.

(c) The following advertisements are not subject to (a) of this section, unless specifically prohibited:

(1) a "tombstone" advertisement that contains no more than the following information:

(A) the name and address of the issuer;

(B) the identity or title of the security;

(C) the per-unit offering price, number of shares, and amount of the offering;

(D) a brief, general description of the business;

(E) the name and address of the underwriter, or the address where an offering circular or prospectus can be obtained;

(F) the date of issuance;

(2) dividend notices, proxy statements, and reports to shareholders, including investment company quarterly and semiannual reports;

(3) sales literature, advertisements, or market letters prepared in conformity with the applicable regulations and in compliance with the filing requirements of the SEC, NASD, or a national securities exchange, and not found by that agency or organization to be out of compliance with those regulations and requirements;

(4) factual or information letters, bulletins or releases, similar to newsletters, relating to the issuer's progress or activities, the status of the offering, or the issuer's current financial condition;

(5) dissemination of data incorporated in the offering circular or prospectus, if the use of that material out of context does not tend to detract from, distort, supersede, or express a different meaning of the representations or disclosures contained in the offering circular or prospectus.

(d) A person who knowingly prepares, distributes, or causes to be issued or published sales literature that is inaccurate, false, misleading, or tending to mislead in a material respect, or that is otherwise in violation of this section is subject to an administrative or civil enforcement proceeding arising under AS 45.55.

(e) For purposes of this section, an advertisement includes a

(1) display, pamphlet, brochure, letter, article, or communication published in a newspaper, magazine, or other periodical;

(2) script or recording; and

(3) radio or television announcement, broadcast, or commercial. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154; am 6/8/2001, Register 158).

Authority: AS 45.55.150 AS 45.55.170 AS 45.55.950

Sec. 3 AAC 08.910. EXEMPTIONS. The following govern exemptions under AS 45.55 relating to securities and transactions as indicated:

(1) manual exemptions

(A) for the purpose of the "manual exemption" under AS 45.55.900(b)(17), the following publications that contain information prescribed at AS 45.55.900(b)(17) are "nationally recognized securities manuals":

(i) Standard & Poor's;

(ii) Moody's Investors Service, Inc.;

(iii) Financial Communications Company, Inc., which were formerly known as "Moody's Manuals";

(iv) Fitch Investors Service, LP;

(B) the distribution of large blocks of securities by controlling persons will ordinarily be presumed to be for the direct or indirect benefit of the issuer, and not within the provisions of the manual exemption.

(2) unsolicited orders--a purchaser acquiring securities in a nonissuer transaction by or through a registered broker-dealer under an unsolicited order to buy, and in which the broker-dealer acts as agent for the purchaser and receives no commission or other compensation from any source other than the purchaser, shall acknowledge in writing that the purchaser's order to buy was unsolicited; a signed copy of each acknowledgment shall be preserved by the broker-dealer as may be required by the SEC.

(3) private offering exemption

(A) issuers exempted by AS 45.55.900(b)(5)(A) or (B) shall notify the administrator at least two days before selling securities by filing State of Alaska Form 08-106 for the AS 45.55.900(b)(5)(A) exemption or State of Alaska Form 08-107 for the AS 45.55.900(b)(5)(B) exemption; the notice and nonrefundable fees as required by 3 AAC 08.920(a)(6) must be in the administrator's possession at least two full business days before the sale takes place, unless the administrator waives the two-day time requirement;

(B) in AS 45.55.900(b)(5)(A) and (B), "in this state" has the same meaning as "in this state" in AS 45.55.980(c);

(C) in AS 45.55.900(b)(5)(B)(i), "solely in this state" is satisfied if the issuer meets the criteria of 17 C.F.R. 230.147(c) adopted under 15 U.S.C. 77a-77b (Securities Act of 1933);

(D) in AS 45.55.900(b)(5)(C), "initial issue of shares" means the first distribution of stock or ownership or partnership interests by the entity issuing the securities;

(E) unless waived by the administrator at the written request of the issuer, the exemption at AS 45.55.900(b)(5)(A) may not be relied upon unless the issuer has reason to believe, in the case of

(i) a corporation, the total number of security holders in this state does not before the sale and will not in consequence of the sale exceed twenty holders;

(ii) a limited partnership or limited liability partnership, the total number of limited partners in this state does not before the sale and will not in consequence of the sale exceed twenty partners;

(iii) a limited liability company, the total number of members in this state does not before the sale and will not in consequence of the sale exceed twenty members;

(F) unless waived by the administrator at the written request of the issuer, the exemption provided by AS 45.55.900(b)(5)(B) may not be relied upon unless the issuer has reason to believe, in the case of

(i) a corporation, the total number of security holders in this state does not before the sale and will not in consequence of the sale exceed thirty holders;

(ii) a limited partnership or limited liability partnership, the total number of limited partners in this state does not before the sale and will not in consequence of the sale exceed thirty partners;

(iii) a limited liability company, the total number of members in this state does not before the sale and will not in consequence of the sale exceed thirty members;

(4) for the purposes of (3)(E) and (3)(F) of this section, the administrator will consider the following to be a single owner of a security:

(A) a husband and wife;

(B) a child and the child's parent or guardian when the parent or guardian holds the security for the benefit of the child;

(C) a corporation, a partnership, a limited liability partnership, a limited liability company, an association or other unincorporated entity, a joint stock company, or a trust, if the corporation, partnership, limited liability partnership, limited liability company, association or other unincorporated entity, joint stock company, or trust that was not formed for the purpose of purchasing or owning the security;

(5) an application for exemption under AS 45.55.900(b)(4) where the offer or sale is to a financial institution or institutional buyer other than a bank, savings institution, trust company, insurance company, investment company as defined in 15 U.S.C. 80a (Investment Company Act of 1940), or pension or profit-sharing trust, shall be filed with the administrator on State of Alaska Form 08-108 along with the nonrefundable fees as required by 3 AAC 08.920(a)(6) before the offer or sale takes place;

(6) an application for exemption under AS 45.55.900(b)(7)(B) shall be filed with the administrator on State of Alaska Form 08-109 along with the fees as required by 3 AAC 08.920(a)(6); the application must be in the administrator's

possession five full business days before the proposed transaction, unless the administrator waives the five-day time requirement;

(7) an application for exemption under AS 45.55.900(b)(18) shall be filed with the administrator on State of Alaska Form 08-110 along with the fees as required by 3 AAC 08.920(a)(6); the application must be in the administrator's possession within 15 days of the first sale in this state;

(8) the limitation on the availability of the exemption at AS 45.55.900(b)(18) includes issuers that are in the development stage that either have no specific business plan or purpose or have a business plan or purpose to engage in a merger or acquisition with an unidentified company or other entity or person; the administrator will consider in making decisions under this paragraph that the limitation on the availability of the exemption does not include issuers that are in the development stage that have a specific business plan or purpose where that business plan or purpose is not to engage in a merger or acquisition with an unidentified company or other entity or person; the administrator will consider in making decisions under this paragraph that one of the explicit objectives of the exemption at AS 45.55.900(b)(18) is to allow issuers to use electronic and other matching services such as the Small Business Administration's ACE-Net (Angel Capital Electronic Network); the administrator will consider that issuers that meet the criteria of the ACE-Net to meet the criteria of this exemption unless explicitly included in the limitation on availability;

(9) an application for exemption under AS 45.55.900(b)(19) shall be filed with the administrator on State of Alaska Form 08-111 along with the fees as required by 3 AAC 08.920(a)(6), and must be in the administrator's possession at least two business days before the offer is made, unless the administrator waives the two-day time requirement;

(10) in AS 45.55.900(b)(20),

(A) "affinity" means by marriage;

(B) "consanguinity" means by blood;

(C) "within the fourth degree of affinity or consanguinity" includes only, whether by marriage or blood, the person or the person's

(i) children;

(ii) grandchildren;

(iii) great-grandchildren;

(iv) parents;

(v) brothers and sisters;

(vi) nephews and nieces;

(vii) grandnephews and grandnieces;

(viii) grandparents;

(ix) uncles and aunts;

(x) first cousins;

(xi) great grandparents;

(xii) great uncles and great aunts; and

(xiii) great-great grandparents;

(11) each application for exemption filed under AS 45.55.900 must be accompanied by the fee as provided in 3 AAC 08.920(a)(6); the administrator will not consider the application for exemption complete until both the application, containing the required information, and the required fee are received by the administrator;

(12) each application for exemption is effective as of the date provided in the order or notice of effectiveness sent by the administrator to the person requesting

the exemption; the administrator will set the effective date as the date of receipt of the application and fees and the statutory requirement for prenotification, if any, unless the prenotification period is waived by the administrator; if the administrator waives the prenotification period, the effective date is the date of receipt of the application and fees.

(13) The exemption contained in AS 45.55.900(a)(4) for instruments of nine months maturity or less applies only to commercial paper defined for these purposes as notes, drafts, bills of exchange, and bankers' acceptances that, in addition to meeting the requirements of AS 45.55.900(a)(4) are also prime quality commercial paper; to be prime quality commercial paper those instruments must arise out of current commercial, agricultural, or industrial transactions, and may not be intended to be marketed to the public, whether or not eligible for discount by a federal reserve bank; for purposes of this paragraph, "prime quality" means rated "A" or better by Fitch Investor Services. (Eff. 2/20/72, Register 41; am 3/24/76, Register 57; am 2/9/78, Register 65; am 11/18/90, Register 116; am 9/8/91, Register 119; am 10/1/1999, Register 151; am 6/8/2001; Register 158).

Authority: AS 45.55.900 AS 45.55.950

3 AAC 08.915. RESCISSION OF ILLICIT SALES. (a) In dealing with a sale of securities that violates AS 45.55 or this chapter, the administrator will, in the administrator's discretion, impose a reduced sanction or penalty or decline to pursue civil enforcement against an issuer or person acting on behalf of the issuer if the issuer provides

(1) appropriate current disclosures and an offer of rescission to each investor under AS 45.55.930(k), 45.55.900(b)(19), and 3 AAC 08.910(9) within a reasonable time after discovery of the violation and seeks an appropriate amendment to any registration or exemption; and

(2) the administrator with the full details of the transaction, demonstrates that the seller sold the security in good faith, and proves that there was no intent to violate 45.55 or this chapter.

(b) A rescission payment under this section must be made without condition, and the person offering the rescission must have the financial capacity to pay.

(c) If the rescission creates additional risks or obligations for purchasers who do not accept rescission under (a) of this section, those risks and obligations must be disclosed.

(d) This section does not relieve an issuer or person acting on behalf of an issuer from compliance with or liability under other federal or state law. (Eff. 4/19/2000, Register 154)

Authority: AS 45.55.900 AS 45.55.920 AS 45.55.930 AS 45.55.950

3 AAC 08.920. FILING, FEES, AND FORMS. (a) All applications, notices, petitions, amendments, reports, and complaints required under AS 45.55 and this chapter are governed by the following:

(1) a document is filed for record when it is received in the office of the administrator

(A) only the original executed copy of each form is required; if a document pertains to more than one subject or application, a separate form, including cover or transmittal letter, or two or more copies of it, commensurate with the number of items submitted, shall be filed;

(B) all forms and documents shall be in electronic medium or printed, lithographed, mimeographed, typewritten, or prepared by a similar process which, in the opinion of the administrator, produces copies suitable for a permanent record and shall be clear, easily readable, and suitable for repeated copying; exhibits may be attached to additional sheets or filed in separate envelopes, properly marked or identified;

(C) all documents filed become a part of the records of the administrator and, unless designated as confidential by the administrator, are available for public inspection;

(2) all fees shall accompany the application or supplemental amendment to which they pertain and are payable by check or money order to the State of Alaska; the administrator will, in the administrator's discretion, approve another payment form if it furthers the purposes of AS 45.55 and this chapter;

(3) the nonrefundable notice fee for offerings of securities covered under 15 U.S.C. 77r(b)(4)(D) (sec. 18(b)(4)(D) of the Securities Act of 1933), as amended is \$600 for one year, or \$1,100 if an automatic extension of one year is desired by the issuer at the time the notice is filed;

(4) the nonrefundable notice fee for offerings of securities covered under 15 USC 77r(b)(2) (sec. 18(b)(2) of the Securities Act of 1933), as amended is \$600 for one year, or \$1,100 if an automatic extension of one year is desired by the issuer at the time that the notice is filed;

(5) a person filing an application for registration of securities shall pay a nonrefundable filing fee of \$100 and a refundable registration fee of \$500 for one year, or a nonrefundable filing fee of \$100 and a refundable registration fee of \$1,000 if an automatic extension of one year is desired by the issuer at the time the application for registration application is filed;

(6) a person filing or required to file a notice under AS 45.55.900 shall pay a nonrefundable fee of \$50, or a nonrefundable fee of \$125 if an expedited review procedure is requested and the fee is paid in a form authorized by (2) of this subsection;

(7) a person filing a request for interpretative opinions under AS 45.55.970(e), including requests for "No Action Letters", shall pay a nonrefundable fee of \$100; the expedited review procedure is not available for these requests;

(8) a person filing a notice of a name change of an issue or adding or deleting classes to an issue registered or noticed under AS 45.55 shall pay a \$20 nonrefundable notice fee for each change, addition, or deletion filed;

(9) a person submitting a solicitation of interest form under 3 AAC 08.087 shall pay a nonrefundable fee of \$50, or a nonrefundable fee of \$125 if an expedited review procedure is requested and the fee is paid in a form authorized by (2) of this subsection;

(10) a person filing a registration statement under 3 AAC 08.710 shall pay a nonrefundable fee of \$250.

(b) To comply with a provision for a consent to service of process required to be filed with the administrator under AS 45.55 and this chapter, a broker-dealer, an agent, a federal covered adviser, a state investment adviser, an investment adviser representative, or an issuer may incorporate by reference any consent to service of process previously filed with the administrator by that person or entity. (Eff. 2/20/72, Register 41; am 10/1/99, Register 151)

Authority: AS 45.55.110

AS 45.55.950

AS 45.55.980

3 AAC 08.930. HEARINGS. (a) The administrator or the administrator's designated hearing officer will hold hearings under AS 45.55.935 upon written request by any person aggrieved by any act or failure to act of the administrator or by any report, ruling, or order of the administrator. The written request for hearing must specify the grounds to be relied upon as a basis for the relief requested at the hearing. The administrator or the hearing officer will, in the administrator's discretion, hold hearings upon the administrator's own motion, under AS 45.55.935.

(b) Upon receipt of written request for a hearing, the administrator will, within 30 days from the receipt of the request, either schedule the matter for hearing or vacate in writing the order that the request concerns. The hearing shall take place no later than 90 days after the request is received by the administrator. If a delay is made necessary because of exigencies beyond the control of the parties or the hearing officer, application may be made to the administrator for an extension of time for good cause shown.

(c) At least 10 days advance notice of the hearing will be given to all persons directly affected by the hearing. In the notice of hearing the administrator will or the hearing officer shall include

- (1) the time and place of the hearing;
- (2) a statement of the matters to be considered;
- (3) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (4) references to the particular sections of AS 45.55 or this chapter that are involved.

(d) The parties shall, no later than 20 days before the hearing, exchange those documents they intend to introduce at the hearing. A party may not obtain additional discovery, except upon a motion that demonstrates, to the satisfaction of the administrator or hearing officer, that good cause exists for additional discovery, and that additional discovery is to be limited to those areas that are relevant to the matter to be heard. Discovery must be completed at least 10 days before the hearing.

(e) Any person who is a party to the hearing before the administrator and who may be adversely affected by the order of the administrator may have subpoenas issued to any witness on that person's behalf in accordance with AS 44.62.430. The party or the party's counsel is responsible for timely service of the subpoenas.

(f) Any person affected by the hearing may appear in person or by counsel. That person or counsel may be present during the giving of evidence, may have a reasonable opportunity to examine and inspect all documentary evidence, may examine witnesses, and may present evidence on counsel's client's behalf.

(g) The following rules of evidence apply in hearings held under this section:

- (1) oral evidence will be taken only on oath or affirmation.
- (2) each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on matters relevant to the issues, including matters not covered in the direct examination, impeach a witness regardless of which party first called the witness to testify, and rebut the evidence against that party.

(3) witnesses must give testimony relevant to the issue; upon objection of any party, the party calling the witness must make an offer of proof as to the witnesses' testimony and its relevance; repetitive witnesses are not allowed, unless for extraordinary good cause;

(4) if the respondent does not testify in the respondent's own behalf, the respondent may be called and examined as if under cross-examination;

(5) the hearing need not be conducted according to technical rules relating to evidence and witnesses; relevant evidence, as defined at Rule 401 of the Alaska Rules of Evidence, must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action; hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action; the rules of privilege are effective to the same extent that they are recognized in a civil action; irrelevant and unduly repetitious evidence will be excluded.

(h) A record of all hearings will be made. Upon reasonable request made by any person affected by the hearing, and at that person's expense, a full stenographic record of the proceedings will be made. When a transcription is made part of the records of the division, any person having a direct interest in it will be furnished with a copy of the stenographic or electronic record at the requestor's expense.

(i) The record in a hearing includes the following:

- (1) all pleadings, motions, and intermediate rulings;
- (2) all evidence received or considered, including a statement of matters officially noted;
- (3) questions or offers of proof, objections, and rulings on them;
- (4) proposed findings and exceptions;
- (5) the proposed decision, opinion, report, or order of the hearing officer, or the decision, opinion, report, or order of the administrator, if the hearing is conducted by the administrator.

(j) If the matter is heard before a hearing officer, the hearing officer shall make recommended findings of fact and conclusions of law to be presented within 10 days of the termination of the hearing to the administrator for adoption, amendment, or rejection. The administrator shall, within 10 days of receiving the hearing officer's recommendations, make a final order or remand the matter to the hearing officer for additional findings. If the matter is heard before the administrator, the administrator shall make a final order within 10 days of the termination of a hearing. A final order will be in writing. A final order will include findings of fact and conclusions of law. All findings of fact will be based exclusively on the evidence presented and on matters officially noticed. Findings of fact will be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of a final order will be delivered or mailed to each party affected or to that party's attorney of record within 10 days of the termination of the hearing or 10 days after the hearing officer makes the recommendation to the administrator.

(k) The administrator will, in the administrator's discretion, grant a rehearing to any aggrieved party if the party makes a written request within 10 days after the final order is mailed to the person entitled to receive it. A party requesting rehearing must set out one or more of the following grounds:

- (1) newly discovered evidence or newly available evidence relevant to the issues;
- (2) a need for additional evidence to develop the facts essential to a proper decision;

(3) probable error committed in the proceeding or in the administrator's decision that would be grounds for reversal on judicial review of the order;

(4) the need for further consideration of the issues and the evidence in the public interest.

(l) A rehearing is limited to those grounds upon which the rehearing was requested or granted. However, the administrator will, in the administrator's discretion, rehear, reopen, or reconsider any matter

(1) in accordance with other applicable statutory provisions; or

(2) on the grounds of

(A) fraud by the prevailing party; or

(B) procurement of the order by perjured testimony or fictitious evidence.

(m) An order or decision resulting from a rehearing will be delivered or mailed to each party affected and to that party's attorney of record within 10 days after termination of the rehearing. (Eff. 1/10/78, Register 65; am 4/19/2000, Register 154)

Authority: AS 45.55.060 AS 45.55.120 AS 45.55.900 AS 45.55.920
AS 45.55.935 AS 45.55.950

3 AAC 08.945. ELECTRONIC SIGNATURES. The administrator will, in the administrator's discretion, accept an electronic signature on an electronic application or other electronic record that is filed with the administrator and that requires a signature under AS 45.55 or this chapter if

(1) a certifying authority registered under AS 09.25.510(b) verifies that the electronic signature is authentic; and

(2) the person providing the electronic signature has made an agreement, with the certifying authority described in (1) of this section, that the person accepts or agrees to be bound by an electronic record executed or adopted with that signature. (Eff.

4/19/2000, Register 154)

Authority: AS 09.25.510 AS 45.55.950

3 AAC 08.950. DEFINITIONS. Unless the context requires otherwise, in AS 45.55 and this chapter, and in the forms, instructions, and orders of the administrator,

(1) "accredited investor" has the meaning given in 17 C.F.R. 230.501(a), as revised as of October 1, 1999 and adopted by reference;

(2) "adjusted net earnings" means the issuer's net earnings, after charges for interest and dividends, and adjusted on a pro forma basis to reflect

(A) the elimination of any required charges for debt, debt securities, or preferred stock that are to be redeemed or retired from the proceeds derived from the public offering of preferred stock;

(B) the effect of any acquisitions or capital expenditures that materially affect the issuer's net earnings, and that

(i) were made by the issuer after its last fiscal year; or

(ii) are proposed or required to be made by the issuer during its current fiscal year;

(C) the effect of charges or dividends on debt, debt securities, or preferred stock issued after the issuer's last fiscal year;

(D) the effect of any charges or dividends on debt, debt securities, or preferred stock that were issued during the issuer's last fiscal year, but that

were outstanding for only a portion of that fiscal year, as if charges or dividends on the debt, debt securities, or preferred stock had been outstanding for the entire fiscal year; and

(E) the effect of any other material changes to an issuer's future net earnings;

(3) "affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, another person;

(4) "aggregate public offering" means the dollar amount of the whole public offering;

(5) "aggregate revenues" means the aggregate amount of revenues a promotional or development stage company has received within the last three consecutive fiscal years immediately preceding the public offering plus revenues received during the period covered by any interim period for financial information included in the prospectus, excluding revenues from interest and extraordinary items;

(6) "applicant" means the person executing an application for the registration of securities, or registration as a broker-dealer, agent, investment adviser representative, or state investment adviser, or any person who will be engaged for all or part of the person's time in selling of securities, either as an executive officer, a dealer, an issuer, or as a salesman for a dealer or an issuer a person executing an application to file a notice in connection with a federal covered adviser or federal covered securities;

(7) "application" means the form prescribed by the administrator for filing in connection with the registration of securities, or as a broker-dealer, agent, investment adviser representative, or state investment adviser, or in connection with notice filings of federal covered securities or federal covered adviser, including all amendments, papers, documents and exhibits incidental thereto;

(8) "associate" means if used to indicate a relationship with a person,

(A) any corporation or legal entity, other than the issuer or majority-owned subsidiary of the issuer, of which a person is an officer, director, partner, or a direct or indirect legal or beneficial owner of five percent or more of any class of equity securities;

(B) a trust or other estate in which a person has a substantial beneficial interest or for which a person serves as a trustee or in a similar capacity; and

(C) a person's spouse and relatives, by blood or by marriage, if the person is a promoter of the issuer, its subsidiaries, its affiliates, or its parent;

(9) "average promotional price" means the average per share price paid for promotional shares and other shares issued before the public offering that are of the same class of shares being offered in the public offering; "average promotional price" is determined by reference to the audited financial statements of the issuer included in the prospectus;

(10) "cash analysis" means a calculation of the issuer's net cash provided by operating activities, as reflected on the statement of cash flows and presented in conformity with generally accepted accounting principles; if debt securities are to be redeemed or retired from the proceeds from the public offering, a pro forma adjustment for the elimination of the related interest charges, net of applicable income taxes, must be made;

(11) "certified" means certified by an independent certified public accountant in accordance with generally accepted accounting practices when used in connection with financial statements;

(12) "control" means the power to direct or influence the direction of the management or policies of a person directly or indirectly, through the ownership of voting securities, by contract or otherwise;

(13) "controlling person" means an officer, a director, a partner, a trustee, or an individual occupying similar status or performing similar functions, or a person owning at least 10 percent of the outstanding shares of securities of a person;

(14) "CRD" means the Central Registration Depository within the NASDR;

(15) "custody of client funds or securities" means for a state investment adviser, the state investment adviser directly or indirectly holds client funds or securities, has authority to obtain possession of client funds or securities, or has the ability to appropriate the client funds or securities, except a state investment adviser is not considered as having constructive custody of a client's funds or securities, if such possession is for the sole purpose of immediately forwarding those funds or securities to a third party at the request of the client;

(16) "depositor" means a promoter who is required to deposit promotional shares into escrow in accordance with 3 AAC 08.180 -/ 3 AAC 08.186;

(17) "discretionary authority over client funds or securities" means, for a state investment adviser, the state investment adviser has a power of attorney or other evidence, including investment advisory contracts, granting discretionary authority by any client to the state investment adviser, or means the state investment adviser exercises discretionary power in violation of AS 45.55.023 (a)(2);

(18) "division" means the Division of Banking, Securities, and Corporations, within the Alaska Department of Community and Economic Development;

(19) "domestic corporation" means a corporation organized under AS 10.05;

(20) "equity securities" means shares of common stock or similar securities and convertible securities, warrants, options, or rights that may be converted into or exercised to purchase shares of common stock or similar securities;

(21) "escrow agent" means

(A) a financial institution

(i) whose principal place of business and domicile is in the United States; and

(ii) that is not affiliated with the issuer, promoters of the issuer, or associates of the issuer, except that the issuer, promoters of the issuer, or associates of the issuer may be customers of the financial institution; or

(B) an attorney or certified public accountant, if the attorney or certified public accountant is not affiliated with the issuer, its promoters, or associates, is licensed to do business in the state in which the attorney or certified public accountant practices, and can demonstrate that the attorney or certified public accountant is adequately insured or can provide a fidelity bond;

(22) "face-amount certificate company" has the meaning given in 15 U.S.C. 80a-4(l) (sec. 4(l) of the Investment Company Act of 1940);

(23) "FDIC" means Federal Deposit Insurance Corporation;

(24) "firmly underwritten offering" means an offering that is purchased by the broker-dealer, who assumes the risk of distribution;

(25) "foreign corporation" means a corporation organized under laws other than the laws of this state;

(26) "impoundment agent" means a financial institution that is domiciled and whose principal place of business is located in the United States and whose deposits are insured by the FDIC;

(27) "independent director" means a member of the issuer's board of directors who

(A) is not an officer of the issuer, its subsidiaries, or their affiliates, and has not been an officer, or employee of the issuer, its subsidiaries, or their affiliates or associates within the last two years;

(B) is not a promoter; and

(C) does not have a material business or professional relationship with the issuer or any of its affiliates or associates; for purposes of determining whether a business or professional relationship is material, the gross revenue derived by the independent director from the issuer, its affiliates, and associates is considered material per se if it exceeds five percent of the independent director's

(i) annual gross revenue, derived from all sources, during either of the last two years; or

(ii) net worth, on a fair market value basis;

(28) "investment adviser representative," as defined in AS 45.55.990 , does not include this state, an executive department of this state, or an employee of this state, if engaged in the normal course of official duties;

(29) "investment company" has the meaning given in 15 U.S.C. 80a-3 (sec. 3 of the Investment Company Act of 1940);

(30) "issuer," as defined in AS 45.55.990 ,

(A) includes a viatical settlement provider or other person that purchases or otherwise acquires a viatical settlement contract for the purpose of selling a viatical settlement interest in the contract; and

(B) for purposes of (A) of this paragraph, does not include a broker-dealer, agent, viator, or insured;

(31) "life insurance policy" includes a certificate of life insurance under a group insurance policy;

(32) "lock-in agreement" means an agreement between an issuer and persons who hold promotional shares in which the issuer and those persons agree, as a condition of registration and for the period specified in the lock-in agreement, not to sell, pledge, hypothecate, assign, grant any option for the sale of, or otherwise transfer or dispose of, whether or not for consideration, directly or indirectly, promotional shares and all certificates representing stock dividends, stock splits, recapitalizations, or similar transactions, that are granted to or received by the security holder;

(33) "'minimum-maximum' offering" means an offering in which the risk of distribution stays with the issuer, the broker-dealer agrees to use best efforts to sell the securities, and a minimum and maximum amount of proceeds is set to determine when the offering closes;

(34) "NASAA" means the North American Securities Administrators Association, Inc.;

(35) "NASD" means the National Association of Securities Dealers, Inc.;

(36) "NASDR" means the National Association of Securities Dealers Regulation, Inc.;

(37) "national securities exchange" means an exchange that has been registered as a national securities exchange as required by 15 U.S.C. 78e - 78f (secs. 5-6 of the Securities Act of 1934);

(38) "NCUSIF" means the National Credit Union Share Insurance Fund;

(39) "net earnings" means the issuer's after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, determined according to generally accepted accounting principles, consistently applied;

(40) "nonprofit corporation" means a corporation

(A) that is organized for any lawful purpose; and

(B) from which no part of the net income inures to the benefit of any person;

(41) "open-end management company" means a management company as defined in 15 U.S.C. 80a-4(3) (sec. 4(3) of the Investment Company Act of 1940) and classified according to the definition in 15 U.S.C. 80a-5(a)(1) (sec. 5(a)(1) of the Investment Company Act of 1940);

(42) "owner of a life insurance policy" means the person that is the original owner or subsequent assignee or transferee, and that has had a bona fide insurable interest in a life insurance policy, if that policy insures the life of an individual who has the right to assign, transfer, sell, devise, or bequeath the benefits of the life insurance policy and who enters or seeks to enter into a viatical settlement contract; "owner of a life insurance policy" does not include

(A) a viatical settlement purchaser;

(B) a viatical settlement provider;

(C) a person acquiring the policy or interest in a policy from a viatical settlement provider; or

(D) an independent third party trustee or escrow agent;

(43) "parent" means an affiliate controlling another person;

(44) "person" has the meaning given in AS 45.55.990 (9);

(45) "predecessor" means a person, a major portion of whose business assets or control has been acquired by another;

(46) "promotional or development stage company" means an issuer who is not listed on the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market System, or whose annual net earnings for each of the last two consecutive fiscal years or whose average, annual net earnings for the last five fiscal years before the public offering have been less than five percent of the aggregate public offering;

(47) "promotional shares" means equity securities that are to be issued or were issued

(A) by an issuer, which is a promotional or development stage company, to promoters for cash or other consideration, including services rendered, patents, copyrights, and other intangibles; or

(B) within three years before the filing of the registration statement by an issuer, which is not a promotional or development stage company, to promoters for cash or other consideration, including services rendered, patents, copyrights, and other intangibles;

(48) "professional corporation" means a corporation organized under AS 10.45 to render a professional service;

(49) "professional geologist" means a geologist certified under AS 08.02.011, or under the applicable occupational licensing statutes and regulations of another state;

(50) "promoter"

(A) means a person who

(i) alone or in conjunction with one or more persons, directly or indirectly, takes the initiative in founding or organizing the issuer or controls the issuer;

(ii) directly or indirectly receives, as consideration for services, property, or both, rendered, five percent or more of any class of the issuer's equity securities or five percent or more of the proceeds from the sale of any class of the issuer's equity securities;

(iii) is an officer or director of the issuer;

(iv) legally or beneficially owns, directly or indirectly, five percent or more of the issuer's equity securities; or

(v) is an affiliate or an associate of a person specified in (i)-(iv) of this subparagraph; and

(B) does not include

(i) a person who receives securities or proceeds solely as underwriting compensation if that person is not included in (A) of this paragraph; or

(ii) an unaffiliated institutional investor, who purchased the issuer's equity securities more than one year before the filing date of the issuer's registration statement; the administrator will, in the administrator's discretion, exclude an unaffiliated institutional investor, who purchased the issuer's equity securities on an arm's-length basis within one year before the filing date of the issuer's registration statement as a promoter, if the exclusion is consistent with the purposes of AS 45.55 and this chapter;

(51) "public offering price" means the per share price at which a promotional or development stage company proposes to offer equity securities to the public;

(52) "qualified mining engineer" means an engineer registered under AS 08.48 and 12 AAC 36, or under the applicable occupational licensing statutes and regulations of another state, who has specialized knowledge and skills in the field of mining;

(53) "registered engineer" means an engineer registered under AS 08.48 and 12 AAC 36, or under the applicable occupational licensing statutes and regulations of another state;

(54) "registered land surveyor" means a land surveyor registered under AS 08.48 and 12 AAC 36, or under the applicable occupational licensing statutes and regulations of another state;

(55) "registrant" means an applicant for whom a registration has been declared effective;

(56) "SEC" means the Securities and Exchange Commission;

(57) "SECO" means the prevailing requirements of the SEC for brokers and dealers who are not members of the NASD;

(58) "state" has the meaning given in AS 45.55.990 ;

(59) "state investment adviser," as defined in AS 45.55.990 , does not include this state, an executive department of this state, or an employee of this state, if engaged in the normal course of official duties;

(60) "unaffiliated institutional investor" means an unaffiliated

(A) bank or savings and loan company;

(B) investment company registered under 15 U.S.C. 80a (Investment Company Act of 1940);

(C) business development company as defined in 15 U.S.C. 80a (Section 2(a)(48) of the Investment Company Act of 1940);

(D) small business investment company licensed by the United States Small Business Administration under 15 U.S.C. 681 (Section 301 of the Small Business Investment Act of 1958);

(E) employee benefit plan, within the meaning of 29 U.S.C. 1002 (Title I of the Employee Retirement Income Security Act of 1974), and state and local government employees retirement and pension plans;

(F) insurance company;

(G) trust company;

(H) private business development company, as defined in 15 U.S.C. 80b-2(a)(22) (Section 202(a)(22) of the Investment Advisors Act of 1940), or a comparable business entity, that is engaged as a substantial part of its business in the purchase and sale of securities, and that will own less than twenty percent of the issuer's securities upon completion of the public offering; or

(I) qualified purchaser as defined under P.L. 104-290 (National Securities Markets Improvement Act of 1996);

(61) "underwriter" means any person who has agreed with the issuer or other person on whose behalf a distribution is to be made to

(A) purchase securities for distribution;

(B) distribute securities for or on behalf of the issuer or other person; or

(C) manage or supervise a distribution of securities for or on behalf of the issuer or other person;

(62) "unit investment trust" has the meaning given at 15 U.S.C. 80a-4(2) (sec.4(2) of the Investment Company Act of 1940);

(63) "viatical settlement contract"

(A) means a written agreement between a viator or insured and a viatical settlement provider for the sale, assignment, transfer, devise, or bequest to the viatical settlement provider by the viator or insured of all or a portion of the death benefit or ownership of a life insurance policy, for consideration that is less than the expected death benefit of the life insurance policy;

(B) includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy; and

(C) does not include

(i) a loan by a life insurance company under the terms of a life insurance contract;

(ii) a loan secured by the cash value of a policy;

(iii) the assignment of a life insurance policy as collateral for a loan to a bank, saving bank, savings and loan association, credit union, or other licensed lending institution;

(iv) the exercise by the viator of an accelerated benefits provision under the terms of the life insurance contract; or

(v) the assignment, transfer, sale, devise, or bequest of a life insurance policy, for less than the expected death benefit, by the viator to a friend or family member if the friend or family member does not enter into more than one agreement in a calendar year;

(64) "viatical settlement financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a life insurance policy from a viatical settlement provider, credit enhancer, reinsurer, or person that is a party to a viatical settlement contract and that has a direct ownership in a life insurance policy that is the subject of a viatical settlement contract but whose sole activity related to the transaction is providing funds to effect the viatical settlement contract and that has an agreement in writing with a viatical settlement provider to act as a participant in a viatical settlement financing transaction;

(65) "viatical settlement financing transaction" means a transaction in which a viatical settlement provider or a viatical settlement financing entity obtains financing for viatical settlement contracts, viaticated policies, or interests in those contracts or policies; "viatical settlement financing transaction" includes secured or unsecured financing, a securitization transaction or securities offering either registered or exempt from registration under federal and state securities law, or a direct purchase of interests in that policy, if that financing transaction complies with federal and state securities law;

(66) "viatical settlement interest" means the entire interest or any fractional interest in a life insurance policy or in the death benefit under a life insurance policy that is the subject of a viatical settlement contract; "viatical settlement interest" does not include the initial purchase from the viator by a viatical settlement provider;

(67) "viatical settlement provider" means a person, other than a viator or insured, that enters into a viatical settlement contract, including a person that

(A) obtains financing for the purchase, acquisition, transfer or other assignment of a viatical settlement contract, viaticated policy, or interest in viatical settlement contracts or viaticated policies; or

(B) sells, assigns, transfers, pledges, hypothecates, or disposes of a viatical settlement contract, viaticated policy, or interest in viatical settlement contracts or viaticated policies;

(68) "viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical settlement purchaser for the purpose of deriving an economic benefit and to which the owner of a life insurance policy is not a party, to purchase that life insurance policy or an interest in that life insurance policy for an amount that is less than the death benefit payable under the policy;

(69) "viatical settlement purchaser" means a person that, for the purpose of deriving an economic benefit, gives money or other consideration for a life insurance policy or an interest in the death benefits of a life insurance policy that is the subject of a viatical settlement contract; "viatical settlement purchaser" does not include an issuer, a viatical settlement financing entity, or a special purpose entity that is created solely to act as a financing source for the viatical settlement provider;

(70) "viaticated policy" means a life insurance policy that has been acquired by a viatical settlement provider under a viatical settlement contract;

(71) "viator" means the owner of a life insurance policy insuring the life of an individual who enters or who seeks to enter a viatical settlement contract; "viator"

does not include a viatical settlement provider or a person that acquires a viaticated policy or a fractional interest in a viaticated policy from a viatical settlement provider or a subsequent viatical settlement purchaser. (Eff. 2/20/72, Register 41; am 10/1/99, Register 151; am 4/19/2000, Register 154; am 4/20/2000, Register 154).

Authority AS 45.55.950 AS 45.55.990